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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~261~~. 27

MOINA CAMPBELL, ADMINISTRATRIX, AND J. B. CAMPBELL, ADMINISTRATOR OF THE ESTATE OF JOHN STAMPS, DECEASED, PLAINTIFFS IN ERROR,

vs.

JAMES H. HOLT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

FILED SEPTEMBER 14, 1882.

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1 *Plaintiff's Petition. Filed May* 18, '74.

THE STATE OF TEXAS, *Washington County:*

At a term of the hon'l. district court, begun and holden at Brenham, within and for the county of Washington, before Hon. E. B. Turner, judge thereof, on Monday, July 3rd, 1876, and ending on August 10th, A. D. 1876, the following cause came on for trial, and the following proceedings were had therein, to wit:

In the District Court. June Term, 1874.

JAMES H. HOLT
vs.
MOINA CAMPBELL, J. B. CAMPBELL, Ad'rs of John Stamps, dec'd. } No. 4830.

To the hon. district court of Washington:

James H. Holt, complaining of Moina Campbell and J. B. Campbell, represents: That both parties, plaintiff and defendants, reside in said county of Washington. That said defendants were
2 at the February term, 1874, of your said district court, on the — day ———, A. D. 1874, duly appointed administrators *de bonis non* of the estate of John Stamps, deceased, and that they have qualified, and are now, and [at] the time hereafter mentioned, were acting as such administrators. That the estate of the said John Stamps is justly indebted to your petitioner in the sum of nineteen thousand three hundred and one $\frac{97}{100}$ dollars for this: That on the — day of ———, 1866, your petitioner was married to Malvina Stamps (Holt). That on the — day of September, 1872, the said Malvina Holt died, leaving a will, which was duly admitted to probate in the district court of Washington county, where the same is of record. That by said will your petitioner was made sole devisee and legatee of all the estate of her, said Malvina, and appointed executor, without bond. That his wife, the said Malvina, was the daughter and one of the heirs-at-law of Henrietta Stamps, deceased.
3 That the said Henrietta Stamps died intestate on the — day of ———, 1857, and that the said Malvina inherited from her said mother certain negroes, named in the account hereto attached, marked Exhibit "A," and prayed to be made a part of this petition. That upon the death of the said Henrietta Stamps the said John Stamps, being her husband, surviving, took possession of her entire estate, including lands and negroes (slaves), and among such negro slaves those named and described in Exhibit "A," hereto attached & made a part hereof, and partitioned and divided the same among the heirs of his deceased wife, to wit: The defendant, Moina Campbell, then Moina Morris, and Cathmore Stamps, and the said Malvina, being then a minor, of tender years and having no guardian, he, the said John Stamps, acting for his minor daughter, Malvina, retained in his possession her share of the said negroes so inherited by her from her said mother, and had and received the use
4 and hire thereof from the 1st day of January, 1858, until the 1st day of July, 1865. That the hire of said negroes was

reasonably worth for the said several years the said sum of money set opposite each name, as shown in the exhibit above referred to. That interest is due on the said several sums of money for the hire of said negroes, from the first day of January after each year's hire, at the rate of eight per cent. per annum.

And the plaintiff further shows that the said Malvina also inherited from her said mother one sixth interest in and to a certain tract of land in Burleson county containing one thousand acres, a part of the McWilliam's League. That the said land was the community property of the said Henrietta Stamps and John Stamps. That the said John Stamps sold the said land to R. S. Fluellen on
the 28th day of February, A. D. 1860, for the sum of five
5 thousand dollars, which he then and there received. That
one-sixth of said sum of five thousand dollars belonged to the plaintiff's testatrix, Melvina Holt, and that interest is due on the said Malvina's one-sixth interest of the said five thousand dollars from the 28th day of February, A. D. 1860, at the rate of eight per cent. per annum. Reference is again made to the account above referred to.

That by reason of the premises the defendants' intestate became liable and promised the plaintiff's intestate to pay her the said sum of nineteen thousand three hundred and one $\frac{50}{100}$ dollars. Yet to pay the same or any part thereof the defendants' intestate has wholly failed, to plaintiff's damage forty thousand dollars. That by reason of the premises a right of action hath accrued to your petitioner, and that he is entitled to have his said claim against said estate approved
and allowed. Petitioner further shows that on the 8th
6 day of May, A. D. 1874, he presented said account marked
Exhibit "A" to the administrators of John Stamps, deceased, as aforesaid, and that they rejected the same and refused to allow it as a just claim against the estate of the said intestate. Wherefore plaintiff prays that said defendants be cited to answer this petition, and that on final hearing he have judgment against the estate of said intestate for his debt, interest, and costs of suit, and for general and equitable relief.

SAYLES & BASSETT,
For Pl'ff.

Service accepted and process waived May 16th, 1874.
BREEDLOVE & EWING,
Att'ys for Def'ts.

BRENHAM, *May* 22, 1874.

We will be responsible for costs.
SAYLES & BASSETT.

EXHIBIT "A."

BRENHAM, *Apr. 16th*, 1874.

7 *Estate of John Stamps to James H. Holt, Dr.*

Jan.,	1859.	To hire of Daphney for one year, 1858	$150 00
"	"	To interest, 8 per cent., to this date	183 50
			$333 50

Jan.,	1859.	To hire of Jess for 1 year, 1858	$250 00	
"	"	To interest, 8 per cent., to this date	305 81	
				$555 81
"	"	To hire of Matilda for 1 year, 1858	150 00	
"	"	To interest, 8 per cent., to this date	183 50	
				333 50
"	"	To hire of Lewis for 1 year, 1858	150 00	
"	"	To interest, 8 per cent., to this date	183 50	
				333 50
"	"	To hire of Allick for 1 year, 1858	100 00	
"	"	To interest, 8 per cent., to this date	122 62	
				222 62
"	"	To hire of Nancy for 1 year, 1858	25 00	
"	"	To interest, 8 per cent., to this date	30 56	
				55 56
Jan. 1,	1860.	To hire of Daphney for 1 year, 1859	150 00	
"	"	To interest, 8 per cent., to this date	171 50	
				321 50
8	Jan. 1,	1861. To hire of Fayette for 1 year, 1859	75 00	
	"	" To interest, 8 per cent., to this date	85 75	
				160 75
Jan. 1,	1861.	To hire of Jess for 1 year, 1859	250 00	
"	"	To interest, 8 per cent., to this date	285 81	
				535 81
"	"	To hire of Matilda for 1 year, 1859	150 00	
"	"	Interest, 8 per cent., to this date	171 50	
				321 50
"	"	To hire of Lewis for 1 year, 1859	150 00	
"	"	Interest, 8 per cent., to this date	171 50	
				321 50
"	"	To hire of Allick for 1 year, 1859	150 00	
"	"	Interest, 8 per cent., to this date	171 50	
				321 50
Jan. 1,	1860.	To hire of Nancy for 1 year, 1859	50 00	
"	"	To interest, 8 per cent., to this date	57 12	
				107 12
"	"	To hire of Little Jess for 1 year, 1859	10 00	
"	"	Interest, 8 per cent., to this date	11 41	
				21 41
"	"	To my wife's $\frac{1}{6}$ interest in sale of Brazos land	833 33	
		Interest, 8 per cent., to this date	941 56	
				1,774 89
9	Jan. 1,	1861. To hire of Daphney for 1 year, 1860	150 00	
		Interest, 8 per cent., to this date	159 50	
				309 50

Jan. 1, 1861.	To hire of Fayette for 1 year, 1860	$100 00		
	Interest, 8 per cent., to this date	106 62		
				$206 62
" "	To hire of Jess for 1 year, 1860	250 00		
	Interest, 8 per cent., to this date	265 81		
				515 81
" "	To hire of Matilda for 1 year, 1860	150 00		
	Interest, 8 per cent., to this date	159 50		
				309 50
" "	To hire of Lewis, 1 year, 1860	200 00		
	Interest, 8 per cent., to this date	212 62		
				312 62
" "	To hire of Allick for 1 year, 1860	150 00		
	Interest, 8 per cent., to this date	159 50		
				309 50
" "	To hire of Nancy for 1 year, 1860	50 00		
	Interest, 8 per cent., to this date	53 12		
				103 12
" "	To hire of Little Jess for 1 year, 1860	25 00		
	Interest, 8 per cent., to this date	26 91		
				51 91
10 Jan. 1, 1862.	To hire of Daphney for 1 year, 1861	150 00		
	Interest, 8 per cent., to this date	147 50		
				297 50
Jan. 1, 1862.	To hire of Fayette for 1 year, 1861	100 00		
	Interest, 8 per cent., to this date	98 62		
				198 62
" "	To hire of Palner for 1 year, 1861	75 00		
	Interest, 8 per cent., to this date	73 75		
				148 75
Jan. 1, 1862.	To hire of Jesse for 1 year, 1861	250 00		
	Interest, 8 per cent., to this date	245 81		
				495 81
" "	To hire of Matilda for 1 year, 1861	150 00		
	Interest, 8 per cent., to this date	147 50		
				297 50
" "	To hire of Lewis for 1 year, 1861	200 00		
	Interest, 8 per cent., to this date	196 62		
				396 62
" "	To hire of Allick for 1 year, 1861	150 00		
	Interest, 8 per cent., to this date	147 50		
				297 50
" "	To hire of Nancy for 1 year, 1861	75 00		
	Interest, 8 per cent., to this date	73 75		
				148 75

11	Jan. 1, 1862. To hire of Little Jess for 1 year, 1861	$25 00		
	Interest, 8 per cent., to this date	24 91		
				$49 91
Jan. 1, 1863.	To hire of Daphney for 1 year, 1862	150 00		
	Interest, 8 per cent., to this date	135 50		
				285 50
" "	To hire of Fayette for 1 year, 1862	150 00		
	Interest, 8 per cent., to this date	135 50		
				285 50
" "	To hire of Palmer for 1 year, 1862	100 00		
	Interest, 8 per cent., to this date	90 62		
				190 62
" "	To hire of Jess for 1 year, 1862	250 00		
	Interest, 8 per cent., to this date	225 81		
				475 81
" "	To hire of Matilda for 1 year, 1862	150 00		
	Interest, 8 per cent., to this date	135 50		
				285 50
" "	To hire of Lewis for 1 year, 1862	250 00		
	Interest, 8 per cent., to this date	225 81		
				475 81
" "	To hire of Allick for 1 year, 1862	200 00		
	Interest, 8 per cent., to this date	180 62		
				380 62
12	Jan. 1, 1863. To hire of Nancy for 1 year, 1862	100 00		
	Interest, 8 per cent., to this date	90 62		
				190 62
Jan. 1, 1863.	To hire of Little Jess for 1 year	150 00		
	Interest, 8 per cent., to this date	123 50		
				273 50
Jan. 1, 1864.	To hire of Daphney for 1 year, 1863	150 00		
	Interest, 8 per cent., to this date	123 50		
				273 50
" "	To hire of Fayette for 1 year, 1863	150 00		
	Interest, 8 per cent., to this date	123 50		
				273 50
" "	To hire of Palmer for 1 year, 1863	100 00		
	Interest, 8 per cent., to this date	82 62		
				182 62
" "	To hire of Jesse for 1 year, 1863	250 00		
	Interest, 8 per cent., to this date	205 81		
				455 81
" "	To hire of Matilda for 1 year, 1863	150 00		
	Interest, 8 per cent., to this date	123 50		
				273 50
" "	To hire of Lewis for 1 year, 1863	250 00		
	Interest, 8 per cent., to this date	205 81		
				455 81

13	Jan. 1, 1864. To hire of Allick for 1 year, 1863	$200 00		
	Interest, 8 per cent., to this date	162 62		
				$362 62
	Jan. 1, 1864. To hire of Nancy for 1 year, 1863	100 00		
	Interest, 8 per cent., to this date	82 62		
				182 62
	" " To hire of Little Jess for 1 year, 1863	50 00		
	Interest, 8 per cent., to this date	41 22		
				91 22
	Jan. 1, 1865. To hire of Daphaney for 1 year, 1864	150 00		
	Interest, 8 per cent., to this date	111 50		
				261 50
	" " To hire of Fayette for one year, 1864	150 00		
	Interest, 8 per cent., to this date	111 50		
				261 50
	" " To hire of Palmer for one year, 1864	100 00		
	Interest, 8 per cent., to this date	70 62		
				170 62
	" " To hire of Jess for 1 year, 1864	250 00		
	Interest, 8 per cent., to this date	185 81		
				435 81
	" " To hire of Matilda for 1 year, 1864	150 00		
	Interest, 8 per cent., to this date	111 50		
				261 50
14	Jan. 1, 1865. To hire of Lewis for one year, 1864	250 00		
	Interest, 8 per cent., to this date	185 81		
				435 81
	Jan. 1, 1865. To hire of Alleck for one year, 1864	200 00		
	Interest, 8 per cent., to this date	146 62		
				346 62
	" " To hire of Nancy for 1 year, 1864	100 00		
	Interest, 8 per cent., to this date	74 62		
				174 62
	" " To hire of Little Jess for 1 year, 1864	100 00		
	Interest, 8 per cent., to this date	74 62		
				174 62
	Jan. 1, 1866. To hire of Fayette for 6 months, 1865	75 00		
	Interest, 8 per cent., to this date	49 75		
				124 75

Jan. 1, 1866.	To hire of Palmer 6 months, 1865	$50 00		
	Interest, 8 per cent., to this date	33 26		
				$83 26
" "	To hire of Jess for 6 months, 1865	125 00		
	Interest, 8 per cent., to this date	82 90		
				207 90
" "	To hire of Matilda for 6 months, 1865	75 00		
	Interest, 8 per cent., to this date	49 75		
				124 75
15 Jan. 1, 1866.	To hire of Lewis for 6 months, 1865	125 00		
	Interest, 8 per cent., to this date	82 90		
				207 90
Jan. 1, 1866.	To hire of Nancy for 6 months, 1865	50 00		
	Interest, 8 per cent., to this date	33 06		
				83 06
" "	To hire of Little Jess for 6 months, 1865	50 00		
	Interest, 8 per cent., to this date	33 06		
				83 06
				$19,301 97

THE STATE OF TEXAS, *Washington County:*

Before me, R. S. Bassett, a notary public in and for the county of Washington, duly commissioned and acting as such, this 25 day of April, 1874, personally appeared James H. Holt, who, first being duly sworn, says: That on the — day of ——, 186–, he was married to Malvina Stamps (Holt); that on the 6 day ——, 1872, she died, leaving a will; that said will was duly probated at the fall term, 1872, of the district court of Washington county; that in
16 said will he was made sole legatee and appointed executor without bond; that his wife, the said Malvina, was the daughter of Henrietta Stamps, deceased; that said Henrietta Stamps died on the — day of ——, 1857; that said Malvina inherited from her said mother certain negroes named in the foregoing account; that the said John Stamps had possession of the said negroes therein named from the first day of January, 1858, till the first day of July, 1865; that hire of the said negroes was reasonably worth for the said several years the said sums of money set opposite each name; that it was customary to pay for the hire of negroes on the first day of January after each year's hire; that interest is due at the rate of 8 per cent. for the hire of each negro from the first day of January for each year the said Stamps had control and possession of them; that the said Malvina also inherited from her said mother one-sixth interest in a certain tract of land situated in Burleson county
17 containing one thousand acres of land, a part of the McWilliams league; that said land was the cummunity property of

the said Henrietta Stamps and John Stamps; that the said John Stamps sold the said land to R. F. Fluellen on the 28th day of February, 1860, for the sum of five thousand dollars; that interest is due on the said Malvina's one-sixth share of the said $5,000 from the said 28th day of February, 1860; that said claim against the said estate of John Stamps, deceased, for the sum of nineteen thousand three hundred and one & $\frac{97}{100}$ dollars (which includes the hire of the negroes aforesaid for the years aforsaid and the said Malvina's $\frac{1}{6}$ interest in the sale of the Burleson county land and interest thereon as aforesaid) is a just claim against said estate; that nothing has been paid or delivered toward the satisfaction of the same, and that there are no counter-claims known to affiant, and the same is justly due.

JAMES HOLT.

18 Witness my hand and official seal, at office, this 25th day of April, A. D. 1874.

[L. S.] R. S. BARRETT, *N. P., W. C.*

Endorsement: Rejected May 8th, A. D. 1874. Moina Campbell, J. B. Campbell, adm'rs John Stamps, dec'd.

Amended Petition. Filed July 11, '76.

JAMES H. HOLT *vs.* M. & J. B. CAMPBELL.

And now comes the plaintiff, and by leave of the court amends his petition by way of replication to the sworn matter set up; defen'ts answer says that the said Malvina Stamps, the daughter of the said Jno. & Henrietta Stamps, was born on or about 1st day of January, 1842, and that she married your petitioner on or or about the 6th day of December, 1866, and died in said county of Washing-
19 ton, without children, on or about the 10th day of October, 1873, and that your petitioner is entitled to all her rights of property under the provisions of her will heretofore mentioned.

Plaintiff denies that any partition of the community property of the said John and Henrietta Stamps has ever been made, but that the same is now in course of administration, and that said estate is justly indebted, as alleged in the original petition, to you- petitioner for the interest of the said Malvina in a tract of land belonging to said community estate & sold by the said John Stamps after the death of the said Henrietta and the proceeds thereof converted to his own use. Plaintiff further says that in the partition made among the heirs of said Henrietta of her separate estate, consisting of lands and negroes mentioned in the original petition, the said John Stamps retained in his possession certain negroes allotted to the said J. C. Stamps & Moina Morriss, who had received a complete education, and were then married, for the purpose of providing for the
20 maintenance and education of the said Malvina out of their proceeds.

Plaintiff further says that the said John Stamps was a man of

large property, and that it was his duty to provide for the maintenance and support of the said Malvina.

That the said Malvina was a member of the family of the said John Stamps until her marriage as above stated, & by her attention, industry, & care contributed to the comfort & support of said family.

SAYLES & BASSETT &
SHEPARD & GARRETT,
For the Pl'ff.

Ptaintiff's Amended Petition Filed July 11, '76.

JAMES H. HOLT *vs.* MOINA CAMPBELL *et al.*

And now comes the plaintiff, & by leave of the court amends his petition, & says that the partition and distribution of the
21 property of Henrietta Stamps mentioned in plaintiff's petition was made with the approval & consent of the heirs of the said Henrietta; that certain negro slaves of great value, to wit, of the value of $10,000, but whose names & separate value are unknown to plaintiff, were set apart, respectively, to Moina Morriss, now Moina Campbell, to Cathonore Stamps, who, respectively, took possession of the same and exercised all acts of ownership over the same; that the negro slaves mentioned in plaintiff's petition as set apart to the said Malvina was her just portion of her said mother's estate, & that the said Malvina, during her lifetime, & your petitioner, since her death, has acquiesced in said partition & distribution, and has never disputed or sought to disturb the same, and is now willing to abide by the same; and plaintiff further says that the said John Stamps, in his lifetime, always treated and recognized the negro slaves so set apart to the said Malvina as her just distributive share of her mother's, the said Henrietta's, estate, and
22 as her separate & individual property, and that said defendants are, by reason of the premises, estopped from denying and questioning the legality & binding authority of said partition & distribution as stated in plaintiff's petition.

SAYLES & BASSETT &
SHEPARD & GARRETT.

Defendants' Answer. Filed Sept. 15, '74.

JAMES HOLT *vs.* M. & J. B. CAMPBELL.

Now come defendants & move the court to require plaintiff to give security for costs in this case.

BREEDLOVE & EWING,
For Defendants.

And for answer in this behalf defendants except to plaintiff's petition & say the same is insufficient to entitle him to further
23 have & maintain his said action, and of this they ask judgment of the court.

BREEDLOVE & EWING,
For Defendants.

Defendant's Amended Answer. Filed May 28, '74.

Suit pending in District Court, Washington County.

JAMES H. HOLT
vs.
MOINA CAMPBELL & J. B. CAMPBELL, Adm's Estate of John Stamps, Dec'd.

Now come the defendants & on leave of the court amend their answer in this case, & say that the petition of plaintiff shows no right of action against these defendants in their representative capacity, because—

1st. The petition does not allege that the property of Mrs. Henrietta Stamps, if any she had, was ever divided & set apart to her heirs according to law.

2nd. The petition does not show or state the age of Malvina Stamps at the date of her alleged marriage.

24 3rd. The petitioner should sue for a portion of the land alleged to have been sold, if he has any interest therein, & not for a share of the proceeds of such sale.

4th. The petition is otherwise defective, and shows no right of action in plaintiff, and of all these exceptions they ask judgment of the court.

And for further answer in this behalf defendants say that if plaintiff or his said deceased wife ever had any right of action against John Stamps or his estate, the same has now become stale before the commencement of this suit, & was then and is now barred by the statute of limitations, and they here now plead the statute of limitations in bar of plaintiff's said action, and of this they put themselves upon the country. Wherefore they ask for judgment, &c. And for further answer in this behalf defendants deny all & singular the allegations in plaintiff's petition contained, and of this they put themselves upon the country.

25 Wherefore they ask for judgment, &c.

BREEDLOVE & EWING,
For Defendants.

And for further answer in this behalf defendants say that on the —— day of August, A. D. 1867, the said John Stamps, by his deed of that date, recorded in Book V, page 548, & which will be read in evidence on the trial of this case, executed & delivered to Malvina Holt, wife of the plaintiff, in this case, with the full knowledge and consent of the said Malvina sold & transferred to the said Malvina certain lands & property situate in the county of Washington and the county of ——, State of Texas, in full satisfaction of the interest of the said Malvina in her deceased mother's estate; that the tract of land referred to in plaintiff's petition situate in Burleson county, & sold to Fluellen, had been then sold to the said Fluellen, and the said Malvina well knew all of the facts connected with

26 said sale; that in said deed of conveyance said John Stamps conveyed to said Malvina a tract of 640 acres of land situate

in —— county, Texas, on the waters of Cowhouse creek, a tributary of the Leon river, and that said 640 acres of land was so transferred in lieu of and in satisfaction of the interest of said Malvina in & to the said tract of land so sold to the said Fluellen, and the said Malvina took the said deed of conveyance with the full agreement and understanding that the property therein conveyed should be had & received by her in full satisfaction of her entire interest in & to all said lands & property in & to which her said deceased mother had any interest. And the said Malvina then & there went into possession of all the property mentioned in said deed of conveyance, and has ever since had & held possession of the same in her own right & for her own proper behoof & benefit.

27 And they further say that the two hundred and forty acres of said land N. W. of the $\frac{1}{3}$ of the $\frac{1}{2}$ league and adjoining Lauderdale, and the 640 acres of land mentioned in said deed were the separate property of the said John Stamps and were conveyed to the said Malvina with the express understanding and agreement that the same should be her full share of her deceased mother's estate.

And the defendants further say that on the 9th day of February, 1866, in view of the above premises, the said Malvina made, executed, and delivered to said John Stamps an instrument of writing, which is attached hereto, marked Exhibit "B," and made a part of this answer, whereby the said Malvina in said writing acknowledged that she was satisfied with the division of her mother's land. That the said Malvina was then over twenty-one years old, and the lands of her mother had then been divided, and she was well acquainted with all of the facts connected with such division, and that she ever afterwards acquiesced in such division, and died satisfied therewith; and this they are ready to verify. And for further answer

28 in this behalf defendants say that the said John Stamps reared and educated the said Malvina in a style suited to her social position in life, and dressed her according to the demands of society, and all this at great expense, to wit, the sum of five thousand dollars. That he paid her doctor's bill and furnished her boarding until her marriage, at an expense of fifteen hundred dollars. That he furnished her a piano, for which he paid six hundred dollars. That if she had slaves they were an expense to him rather than profit. That more of said slaves were non-supporting than self-supporting. That from 1861 until 1865 inclusive all of said slaves were more expense than profit, and produced no revenue whatever. That said John Stamps supported and paid taxes on, clothed and fed, and paid doctor's bills for said slaves, for which he received no pay whatever. That his reasonable attention and expenses to said slaves from the time of her mother's death, including money paid out by him on their account for clothing, ra-

29 tions, shoes, hats, blankets, taxes, doctor's bills, was reasonably worth ten thousand dollars. That instead of owing the said Malvina anything whatever, the said Malvina was justly indebted to said John Stamps at the date of her marriage with plain-

tiff, and they verily believe if she had lived this suit would never have been brought.

And they here now plead all these several items in set-off to plaintiff's claim sued on this case.

And they further say that the said John Stamps was an affectionate father and treated the said Malvina, who was his youngest child, with great tenderness, and that she returned his love and tenderness with the greatest degree of filial affection and kindness, and at no time did she aught that would cause him grief or pain, and always acquiesced in what her father did, maintaining that what he did was right; and that she lived and died satisfied with the division of her mother's property as made by said father; all of which they are ready to verify. And they further say that
30 if plaintiff ever had any cause of action, the same accrued more than two years prior to the commencement of this suit and is barred by limitation; all of which they are ready to verify. Wherefore they put themselves upon the country, and ask for judgment, &c.

BREEDLOVE & EWING,
For Def't.

The division made of my mother's land is satisfactory to me.
MALLIE STAMPS.

Witness:
MOINA MORRISS.

Feb'y 9th, 1866.

[10c. rev. stamp affixed & cancelled.]

STATE OF TEXAS, *County of Washington:*

Before me, J. J. Stockbridge, clerk of the district of Washington county, this day personally appeared Moina Campbell, formerly Moina Morriss, to me well known, who, on oath, states that she saw Mallie Stamps, now Mallie Holt, sign the annexed and fore-
31 going instrument of writing, and that she subscribed her name thereto as one of the witnesses at the request of said Mallie Stamps, now Mallie Holt.

Witness my hand and the seal of said court, affixed at office in the city of Brenham, this 20th day of January, A. D. 1872.

[SEAL.] J. J. STOCKBRIDGE,
C. D. C., W. C.
By A. M. HUGHES, *Deputy.*

THE STATE OF TEXAS, *County of Washington:*

I, J. J. Stockbridge, clerk of the district court of Washington county, do hereby certify that the within and foregoing instrument of writing was filed in my office on the 20th day of January, A. D. 1872, at 11 o'clock a. m., and recorded on the 16th day of February, A. D. 1872, at 11.15 o'clock a. m., in book Y, page 394, being No. 767 of records of Washington county.

Witness my hand & the seal of said court, affixed this the 16th day Feb'y, A. D. 1872.

J. J. STOCKBRIDGE,
Clk D. C., W. C.

32 *Defendants' Amended Answer. Filed July* 11, '76.

JAMES HOLT *vs.* CAMPBELL & Wife, Ex'rs John Stamps, dec'd.

And now, by leave of the court, come the defendants, and amend their answer, and for amendment say: That prior to the marriage & death of said Mallie Holt she, in her proper name, Mallie Stamps, executed & delivered, for a valuable consideration, to Rob't T. Fluellen, her certain obligation in writing, or quit-claim release, of all her right and interest she then had in and to the land described in plaintiff's petition as being 1,000 acres, a part of the McWilliams league, and sold by John Stamps to R. T. Fluellen on the 28th day of Feb'y, 1860, for the sum of $5,000.00, a copy of which said deed of release is attached to the depositions of R. T. Fluellen, signed "Mallie Stamps," and marked B, which defendants pray may be referred to and taken as a part of this answer.

Wherefore defendants say that plaintiff, by reason of the
33 premises, has no claim against their intestate for any part of the proceeds of the sale of said land, and at the time of the death of the said Mallie she had no interest whatever in said land, all of which they are ready to verify.

And answering further they say, That if said Mallie ever had any claim against said estate, as alleged, the same had long before her death been settled and fully satisfied in a settlement between the said Mallie and her said father, and that more than two years elapsed since the accrual of plaintiff's alleged cause of action, to the filing of his suit, and that same is barred by limitation, all of which they are ready to verify

BREEDLOVE & EWING.
GIDDINGS & MORRIS.

Charges Given by the Court.

HOLT *vs.* CAMPBELL *et al.*

Gentlemen of the jury, there is no limitation in this cause.

Plaintiff, by the will of his deceased wife, was made her sole heir, and is entitled to receive the same as his dec'd wife could
34 have done were she living.

Pl'ff is entitled to the value of the hire of the slaves from the time they were set apart to Malvina Stamps until they were emancipated, or so long as John Stamps had their service. What that value is you must ascertain from the evidence.

Pl'ff is entitled to the $\frac{1}{6}$ of any money received by John Stamps, the proceeds of the sale of any lands belongingto the community estate of John & Henrietta Stamps, after her death, not, however, a greater sum in this case than $\frac{1}{6}$ of $5,000.00, and such sums draws

interest at the rate of 8c. per annum, this amount to be paid out of the estate of John Stamps before his estate shall be distributed among his heirs.

E. B. TURNER,
Judge 16th Dist.

Defendants' Charges Refused.

J. H. HOLT *v.* CAMPBELL and Wife.

1st. The defendants ask the court to charge the jury that
35 the statute of limitations commenced to run on the 2nd of September, 1866, and so continued to run till the adoption of the constitution by a vote of the people on the 30th of November, and the 1st, 2nd, and 3rd days of December, 1869, and an open account due the 2nd September, 1866, would be barred in two years from that date, unless the plaintiff has shown some supervening disability by which the running of the statute was arrested during that time, the claim is barred, and you will find for the defendants.

2nd. If the evidence shows that the plaintiff's demand was barred at or before the adoption of the constitution by the people on the 3rd day of December, 1869, then the provision of the constitution suspending the operation of the statute from 1861 to the 30th of March, 1870, could not and would not revive the plaintiff's cause of action.

3d. Neither an act of the Legislature of this State nor an act of a constitutional convention of this State can take from a citizen thereof a vested right, nor can they impair the obligation of a contract.

36 4th. When the bar to an action has become complete neither the Legislature nor a constitutional convention of this State can revive such cause of action.

5th. If you believe from the evidence that two years had elapsed from the 30th of March, 1870, before the institution of plaintiff's suit, the claim is barred by limitation and cannot recover.

Refused.

E. B. TURNER,
Judge 16th District.

Defendant's Charges Refused.

HOLT
vs. } 4830.
CAMPBELL *et al.*

6th. If the jury believe from the evidence that Malvina Stamps never intended to charge her father with the hire of the negroes and never made any claim therefor, the plaintiff, as legal representative, or her legatee, cannot make that a debt or charge against the estate of her father, which she never intended to be such.

Refused.

37

E. B. TURNER,
Judge 16th District.

Defendants' Bill of Exceptions. Filed Aug. 2, '76.

HOLT *vs.* CAMPBELL & Wife.

Be it remembered that when the above-entitled cause was called for trial the defendant excepted to plaintiff's petitions, original and amended, because it appeared therefrom that the cause of action upon which this suit was brought was barred by limitation at the time it was instituted. But the court held, and so ruled, that it did not appear from plaintiff's said petitions that the cause of action was barred by limitation at the time suit was instituted, and thereupon on that ground overruled defendants' said exceptions, to which ruling defendants excepted.

And be it further remembered that after the argument of counsel to the jury had been concluded in said cause, and before the jury had retired to consider their verdict, the defendants tender
38 to the court the following instructions in writing, and requested that the same be given in charge to the jury:

1st. The defendants ask the court to charge the jury that the statute of limitations commenced to run on the 2nd of September, 1866, and so continued to run until the adoption of the constitution by vote of the people on the 30th November and 1st, 2nd, and 3rd days of December, 1869, and that an open account due the 2nd day of September, 1866, would be barred in two years from that date, and unless the plaintiff has shown some supervening disability by which the running of the statute was arrested during that time, the plaintiff's claim is barred, and you will find for the defendants.

2nd. If the evidence shows that the plaintiff's demand was barred at or before the adoption of the constitution by the people on the 30th November, 1, 2, & 3rd December, 1869, then the provision of the constitution suspending the operation of the statute from
39 1861 to the 3rd March, 1870, would and could not revive the plaintiff's course of action.

3rd. Neither an act of the Legislature of this State nor an act of a constitutional convention of this State can take from a citizen thereof a vested right, nor can they impair the obligation of a contract.

4th. When the bar to an action has become complete, neither the Legislature nor a convention of the people of this State can revive such barred cause of action.

5th. If you believe from the evidence that two years had elapsed from the 30th March, 1870, before the institution of the plaintiff's suit, the claim is barred by limitation, and he cannot recover.

6th. If the jury believe from the evidence that Malvina Stamps never intended to charge her father with the hire of her negroes, and never made any claim therefor, the plaintiff, as her legal representative, or her legatee, cannot make that a debt or charge against the estate of her father, which she never intended to be such.

But the court ruled that said charges were not the law in
40 the case, and for that reason refused to give them in charge to the jury as requested by defendants. To all which rulings of the court the defendant then and there excepted, and tender this

their bill of exceptions, which they pray may be signed and made part of the record in this cause.

E. B. TURNER,
Judge 16th Dist.

Judgment of the Court. Rendered July 12th, '76.

JULY 12TH, 1876.

JAMES H. HOLT
vs. } 4830.
MOINA CAMPBELL & J. B. CAMPBELL, Adm'r.

This day came the parties, by their attorneys, and announced themselves ready for trial, and thereupon came a jury of good and lawful men, who being duly sworn and empannelled as required by law, upon their oath do say:

"We, the jury, find for the plaintiff the sum of eight thousand six hundred and ninety-two & $\frac{93}{100}$ dollars.

"A. H. WOOD, *Foreman.*"

41 It is, therefore, considered by the court that the plaintiff, James Holt, do have and recover of the defendants, Moina Campbell and J. B. Campbell, administratrix and administrator of the estate of John Stamps, deceased, the sum of eight thousand six hundred and ninety-two and $\frac{93}{100}$ dollars, so found by the jury aforesaid, with interest thereon from this date, at the rate of eight per ct. per annum, and all costs in this behalf expended, and that this judgment be certified to the county court of Washington county, to be in due course of administration of the estate of the said John Stamps, dec'd.

Motion for New Trial. Filed July 12, '76.

J. H. HOLT *vs.* J. B. CAMPBELL & Wife, Adm'rs.

And now come the defendants and move the court to set aside the the verdict and judgment in the above-entitled cause—

42 1st. Because the court erred in overruling defendants' demurrer and exceptions to plaintiff's petition as shown by bill of exception.

2nd. Because the court erred in its charge to the jury.

3rd. The court erred in refusing to give the charges asked by the defendants as shown by the bill of exceptions.

4th. The verdict is contrary to the law and the evidence.

5th. The verdict is contrary to the charges of the court.

6th. The verdict is excessive.

7th. The verdict should have been for the defendants.

BREEDLOVE & EWING,
GIDDINGS & MORRIS,
For Defendants.

Judgment Overruling Motion for New Trial. Filed July 25, '76.

JULY 25TH, 1876.

J. H. HOLT
vs. } 4830.
J. B. CAMPBELL & WIFE, Adm'rs.

This day came on to be heard defendants' motion for a new trial in the above cause, and the matters and things therein con-
43 tained being by the court fully understood, it is considered by the court that said motion be overruled and a new trial refused, to which ruling of the court the defendants except, and give notice of appeal to the Supreme Court.

Statement of Facts. Filed Aug. 4, '76.

JAMES H. HOLT *vs.* J. B. CAMPBELL & WIFE, Adm'rs.

The following contains a full and correct statement of all the facts given in evidence on the trial of the above cause:

1. Plaintiff proved that he and Malvina Stamps were married December 6th, 1866, and that she died October 11th, 1872. She left a will making plaintiff sole legatee and devisee of all her estate, and appointing him executor without bond, and preventing administration in the probate court. Said will was duly probated in Washington county, Texas, on the — day of December, 1872.

2nd. Plaintiff then read the account sued on with its endorsements, which, being an exhibit, attached to and made part
44 of petition, has been copied into the transcript and need not be here copied, but reference is here made to it as a part of this statement.

3rd. Plaintiff then read from the records of Washington county, by consent, the following-described deeds: John Stamps to Henrietta Stamps, his wife, April 10th, 1845, book G, p. 187, which conveyed to his wife Henrietta certain slaves and a half of the league of land on which they were living in consideration of money and negroes inherited by his wife from her father's estate and used by him, for her to hold during her natural life, and at her death to be equally divided among her children.

Plaintiff also read the following deeds:

1st. Deed from John Stamps to his wife, dated April 7th, 1854, partitioning the said league of land between himself and wife, giving her the S. E. half containing 2,214 acres.

2nd. Deed from John Stamps to J. C. Stamps, dated Dec. 9th, 1858, reciting that in the division of his wife's estate he gave to his son, J. C. Stamps, the tract of land on which he resided—part of the Austin league; also, another tract of land valued at two
45 thousand dollars, and certain named negroes, eight in number; of these, one is named Alford; and the deed continues as follow: "Alford I keep possession of till Malvina, the youngest daughter, is educated."

3. Deed from John Stamps to Moina Morriss, dated Dec. 21, 1858,

reciting that in the division of his wife's estate he gives to her the land on which she resides, being part of league No. 4 granted to Henry Austin, and certain named negroes, eleven in number. One of them is named Prince, and the deed continues as follows: "Prince I reserve, to educate Malvina, my youngest daughter."

4th. J. C. Stamps & wife to Moina Morriss, dated Dec. 21st, 1858, releasing to him all right and interest in the property conveyed to her by her father.

5. J. W. Morris and Moina, his wife, to J. C. Stamps, dated Dec. 21, 1858, releasing to him all right and interest in the property conveyed to him by her father.

6. It was admitted by defendants that the land described in the deed from Briggs & Smith to John Stamps was sold and con-
46 veyed by John Stamps to R. F. Fluellen by deed with covenant of general warranty, dated Feb'y 28, 1860, for the sum of five thousand dollars expressed in the deed.

7. Plaintiff then read instrument of writing dated Oct'r 19th, 1857, signed by John Stamps and others, as follows:

By consent of my two oldest children I have made the following division of my wife's property: The half league of land on which she lived I have divided into three equal parts, lines running with the side lines of the league, so as to include timber and prairie land. My son, J. C. Stamps, to have the S. W. division. My daughter, Moina, now Mrs. Morris, to have the N. E. division, and the middle tract to my youngest daughter, the lines of each tract to continue down to Col. Sam Lauderdale's line, inclusive of the community property, about 240 acres to each, which will make each tract about 1,000 acres. I rate Mrs. Morriss' tract on account of the improvements, except the gin which I expect to move at, ---------- 10,000
J. C. Stamps', improved by himself ---------- 8,000
Malvina's, unimproved ---------- 8,000

47 The difference made up in other lands.

To the lands herein given to my son and daughter, Moina, I hereby renounce and give up all my right, title, and interest, and put them in full possession as far as the title was in me. Signed this 19th October, 1857.

JOHN STAMPS.

We hereby accept and agree to the above decision, and promise faithfully to abide by the same.

JNO. W. MORRISS.
MOINA MORRISS.
J. C. STAMPS.

Attest:
G. W. KIME.
T. C. WILEY.

6th. Plaintiff then read statement of G. W. Gentry, as follows:

HOLT *vs.* CAMPBELL *et al.*

Suit pending in the District Court of Washington County.

I was well acquainted with John Stamps in his lifetime. Have known him since 1839 or '40 until his death in 1867. His wife,
Henrietta, came to this State with him in 1839 or 1840, and
48 they lived together as man and wife until her death October
3, 1857. During this time Stamps had in possession a large number of negroes. In December, 1858, John Stamps set apart to his son, J. C. Stamps, a number of negroes, which afterwards, with the exception of two or three, came into my possession as the administrator of the estate of J. C. Stamps. At the same time other negroes were set apart to his daughter Moina, the wife of John Morriss. John Stamps had the following negroes, among others, in his possession from the death of his wife until the emancipation of the slaves, to wit: Jess, who, in 1859, was about 60 years of age; Matilda, the wife of Jess, then about the same age; Lewis, the child of Matilda, who was then a grown man; Elleck, child of Matilda, then about 15; Nancy, child of Matilda, then about a head; Daphney, in 1858, about 18 or 20 years of age. Jess, Matilda, Lewis, Elleck, and Daphney are the same negroes which were in the possession of John Stamps in 1845 and subsequently. The negroes
49 above named were average negroes, and their services were worth as much as negroes of the same age and of average quality.

At her death Mrs. Henrietta Stamps left the following children surviving her: J. Cathmore Stamps, Moina, the wife of John Morriss, now the wife of Campbell, and Malvina Stamps, who married James Holt on the 6th day of December, A. D. 1866, and died in the county of Washington on the 10th day of October, 1873, without children, her husband surviving her.

John Stamps died in the fall of 1867. Mrs. Malvina Holt was born in 1841 or 1842.

G. W. GENTRY.

We agree that the foregoing statement of G. W. Gentry may be read in evidence on the trial of the above cause, waiving all objections to the manner and form of taking the same.

September 3rd, 1874.

SAYLES & BASSETT,
For Plaintiff.
BREEDLOVE & EWING,
For Def'ts.

50 7th. Plaintiff then read from the depositions of Mrs. Moina Campbell, one of the defendants, taken by defendants, as follows:

My father made a division of his property during his lifetime among his children. As near as I can recollect the division was

made in 1858, in the first part of the year. There were three heirs; each one of the heirs received nine hundred and fifty or one thousand acres of land; my sister Mallie received in addition thereto six hundred and forty acres of land situate on Cowhouse creek, in order to make her share equal in value to each of the other two shares. There were also negroes divided among the heirs at the same time, the division being equal as to value. My father gave my brother Cathmore Stamps five men: Henry, Alfred, Reuben, Mose, and Milton. To my sister Mallie Stamps he gave seven negroes: Lewis, Alex., Nancy, Daphne and her three children, Fayette, Palmer, and Omar. He gave me eleven negroes, named as follows: Primus, Lucinda, Louisa, Becca, Newton, Henry, Green, Lucy, Horace, Millie, Edmond.

51 2nd. The negroes given to my sister Mallie were at that time were of the following ages, as near as I can remember; Lewis, about 26 years old; Alex., about 24 years old; Nancy, about 15 years old; Daphne, about thirty years old; Fayette, about thirteen years old; Palmer, about eleven years old; Omar, about three years old.

3rd. Sister Mallie was at that time about fifteen years old. She married in December, 1866 She died on the 11th day of October, 1872.

1st X. John and Henrietta Stamps, they were married on the 22 day of February, 1821. They died in Washington county, Texas. My mother died the 7th day of August, 1857. My father died September 24th, 1867. I have the family Bible at home; I did not bring it with me.

2nd X. I have already answered that I had my parents' family Bible at home. The entries in it were, some of them, made
52 by my sister Louisiana, & some of them by myself. I can't now give a copy of the entries in the Bible; could do so if I were at home.

4th X. In June, 1865, father had in his possession all of sister Mallie's negroes, as follows: Alex., about 31 years old; Nancy, about twenty-one years old; Daphne, about thirty-seven years old; Fayette, about twenty years old; Palmer, about eighteen years old, & Omar, about ten years old He had also negroes of his own, as follows: Isaac, about sixty years old; Jessee, about seventy years old; Matilda, about fifty years old; Ann, about twenty-five years old; Walter, about ten years old; Jessee, Jr., about sixteen years old. There were also some small negroes that I have forgotten the names of.

5th X. The property was divided with the assent and approval of the heirs, as far as I know. I have already stated that there was nine hundred and fifty or one thousand acres of land, situated in Washington county, Texas, given to each of said heirs, and
53 that in addition thereto my sister Mallie received 640 acres, situated on Cowhouse creek, to make her share equal in value to the other shares. Her share of the land did not have quite as much improvements on it as the others did. The land in Washington county was, I suppose, at that time worth about ten dollars

per acre. I do not know know the value of the land on Cowhouse creek. The Washington county land was granted to Stephen F. Austin. Don't know what land my father owned at the date of my mother's death.

6th X. The negroes allotted to my brother and myself went into our possession in the first part of the year 1858.

7th X. I was married Sept. 10th, 1857, to John W. Morriss. I and my husband did not receive the land and negroes allotted to me at the date of our marriage.

9th X. The land was my mother's property, except the 640 acres on Cowhouse creek. A portion of the negroes belonged to my mother, but not all of them. She did not claim all of them.

54 8th. Plaintiff then introduced James L. Dallas, who said that before and during the war he was accustomed to the management & hire of negroes. That prior to the war, say in the years 1858–'9–'60 & '61, average field-hands were worth about $150.00 to $175.00, gold, per year. Grown woman or women, from 17 up, were worth from $8 to $10.00 per month.

On cross-examination he stated that during the war he did not think any money was made on negroes—were not worth much more than food and clothes and general expense of keeping them. That occasionally they might be hired out as R. R. hands at $200 per year, but as ordinary farm hands were not much profit. A girl of 15 years was worth about as much as one of 17 years.

On redirect examination he said that the reason that negroes were not profitable during the war was that corn was raised mostly. People who raised cotton made money on them; cotton was very high just after the war. John Stamps was a railroad builder and contractor, had been engaged in building railroads in eastern

55 Texas for several years before the war.

9th. Plaintiff then introduced *then introduced* T. C. Clay who stated that he had hired a great many hands for a year or two before the war; he had hired as many as twenty men, good average men, from Lock Randle for a year for $240.00, gold, apiece, he (Clay) furnishing good clothing and necessaries; hired them for farm work; some of them were good wood choppers, and when the crop was laid by used them in cleaning bottom land on the Brazos. Had hired other negroes besides these, both men and women; good average men were worth about $20.00 per month in gold. Average women were worth from six to eight dollars, gold, per month.

The defendant then introduced the following evidence:

1st. It was admitted by the parties that plaintiff's testatrix, Mallie Stamps, was born about the 1st day of January, 1842.

2nd. Memorandum in writing, signed by Mallie Stamps, dated Feb'y 9th, 1866, as follows: The division made of my mother's

56 land is satisfactory to me.

MALLIE STAMPS.

Feb. 9th, 1866.

Witness:

MOINA MORRISS.

3rd. Deed of gift from John Stamps to said Mallie Holt, as follows:

STATE OF TEXAS, *Washington County:*

Be it known that the undersigned gave to his wife, Henrietta Stamps, before her death, the southeast half of league letter A, No. 3, lying on the waters of the Yeyua and New Years' Creek, granted to Henry Austin by the Mexican government; said ½ league of land I have divided into three equal tracts, and gave the S. E. part to my daughter, Moina Morriss, S. W. to my son, J. C. Stamps, and the middle part to my daughter, Malvina Stamps; the said tract is just between the other two, same length of lines and same quantity of land, and I hereby give her all my right and interest to said tract of ⅓ of the above said ½ league, containing about 740 acres; and I, John Stamps, further give her, of my
57 own land, about 240 acres of land lying northwest of her above tract and adjoining the same, and running with her lines to Sam Lauderdale's line of a tract I sold him, and between lands given to my son and daughter, Moina Morriss, I hereby give and bequeath this lands to my daughter Malvina in fee simple forever; and further, as the middle tract has no buildings on it, though 200 acres improved and in cultivation, I hereby bind myself to give to said Malvina 640 acres of land (to make her division equal to the tracts given to the other children) lying on Cowhouse creek, which empties into the Leon river, county not known, to all of which I hereby subscribe my *subscribe my* name.

JNO. STAMPS.

Witness:
MOINA MORRISS.

THE STATE OF TEXAS, *Washington County:*

Before me, S. S. Hosea, clerk of the county court of said county, personally appeared Jno. Stamps, to me well known, who acknowledged that he signed and executed the within deed of gift for
58 the purposes, uses, and considerations therein set forth and expressed; to certify which I hereto sign my name and affix the seal of the county court of said county, at office in Brenham, this the 13th day of August, 1867.

S. S. HOSEA,
C. C. C., W. C.

Filed Aug. 13th, 1867, at ten o'clock a. m., and recorded same day.

S. S. HOSEA,
C. C. C., W. C.

4th. Defendants then read in evidence from the depositions of R. F. Fluellen, as follows: "I bought one thousand acres of land from John Stamps on the 28th Feb'y, 1860, known as the McWilliams league, being survey C, on the west bank of the Brazos river, in Burleson county. I paid ten dollars per acre for said land; five thousand dollars in 1860 and five thousand in 1861. I had the privilege of paying it in money or land certificates at 40c. I did

not pay any land certificates myself. My notes were placed in the hands of George Butler, of Galveston. Butler advanced to Stamps land certificates, and was to be paid for them by my notes.
59 I paid Butler the money and took up my notes from Butler. The land certificates were located on or near the line of the Eastern Texas or Sabine Pass R. R., so I was informed by Stamps himself. Attached documents marked Exhibit 'A' are all papers that I am able to find on the subject, and is as follows:

$2,539.20. SABINE PASS, *Feb'y 28th*, 1860.

Due John Stamps two thousand five hundred and thirty-nine $\frac{20}{100}$ dollars in land certificates, at 40 cts. per acre, or in cash, at my option. Said certificates or money to be paid by the 21st day of April, 1860.

ROB'T. T. FLEUELLEN."

GALVESTON, *May 1st*, 1860.

MR. ROBERT T. FLEUELLEN,
Washington, Texas.

DEAR SIR: Enclosed please find draft of John Stamps for $2,400, @ 5 months, with 10 per c. interest. I sold land certificates to-day to Mr. Stamps in said draft; he said he could not wait any longer
60. for certificates from you, as he would lose the lands; he wished to give you time, and I concluded to extend the time until 1st Oct'r. Please return me the d'ft accepted, and oblige,

GEO. BUTLER.

I heard Stamps say he got the certificates from Butler.

Malvina was present and assented to the trade. Her father told me that Mallie had a community interest in said land, but that she would pass me her title when she became twenty-one years of age, to which Mallie assented. John Stamps said he had divided his own and his wife's estate, consisting of land and negroes, equally between himself and his children, and that his oldest children, being married and over twenty-one years of age, had released to him their interest in said survey, and if he lived he should see that Mallie should do the same. I concluded to take the risk and make the trade. Mallie Stamps did confirm the sale to me on or about the 23rd day of Feb'y, 1864, she being then twenty-one years of age. It is a quit-
61 claim deed in my handwriting fully describing survey C, the land in question, in which she stated she was then twenty-one years of age, a copy of which is attached hereto, and is as follows:

STATE OF TEXAS, *Washington County:*

Know all men by these presents, that I, Malvina Stamps, of the State and county aforesaid, being twenty-one years of age, have on this day and date transferred and delivered, and by these presents doth transfer and convey and deliver, unto Robert T. Fluellen, of the aforesaid State and county, all my right, title, and interest which

I have or may have in a certain tract of land situated in the county of Burleson, the same being known as survey C, out of the Williams McWilliams league, containing one thousand acres, as is delineated and described by a deed executed by John Stamps to Robert T. Fluellen to said survey C, and which is now on file in the office of the county clerk of Burleson county; and, for considerations specified in said deed, I have hereunto executed unto said Fluellen, his
62 heirs and assigns, this my quit-claim title to my interest in or over said survey C; and in testimony whereof, I have this day and date subscribed my name and seal.

MALLIE STAMPS. [L. S.]

STATE OF TEXAS, *Washington County:*

Before me, S. S. Hosea, clerk of the county court of said county, personally appeared Mallie Stamps, to me well known, who acknowledged that she signed, sealed, and delivered the within deed for the purposes and considerations therein contained, and that the same is her act and deed. Attest S. S. Hosea, clerk of the county court of said county, with the impress of my official seal, at office, in Brenham, this the 23 day of Feb'y, 1864.

S. S. HOSEA,
A. C. C. C. W. C.

I did know the heirs of John Stamps had an interest in said land, for it was so stated by John Stamps. It was a claim for a community interest of their mother. None of the children signed the deed by John Stamps to me, nor did I have any release of
63 the interest of John Morriss and wife.

Defendants then read from such of the depositions of Moina Campbell as had not been read by plaintiff as follows:

"I do not know whether there was any profit of sister Mallie's negroes during the war or not. I think probably the hire would about equal the expense of clothing and maintaining them. I know sister Mallie received the hire for Daphne for one or two years; do not know the amount she received. Sister Mallie was sent to Mississippi to school, at Breashear Academy, for twenty months. She went there in October, 1857. Her expenses while there were about thirty dollars per month, besides $50.00 or $75.00 medical bills. Her expenses up to the time she married were about the same. She was liberally supplied by her father, and always well dressed for the circle in which she moved. I never heard her express any dissatisfaction with her division of the land in any way. I think she was very well satisfied. I never knew of her setting up any
64 claim against her father for the hire of her negroes. She never expressed herself to me anyway showing dissatisfaction with her father's management of the business. She seemed to be satisfied, and to think that father did the best he could. She never made any claim against him for the hire of her negroes. Lewis disappeared in the year 1859, as near as I can remember, and was never afterwards heard of. I don't know whether he died or not.

He had been working on the railroad, and got in trouble with the Irish; was put in jail at night, and the next morning was missing. I do not know whether there was any profit in sister Mallie's negroes during the war or not. I think probably the hire would be about equal to the expense of clothing and maintaining them.

In rebuttal, plaintiff in his own behalf stated that he had never been able to find the cow-house tract of land mentioned in said deed from Stamps to his wife Malvina. He had looked for it himself, and had employed an attorney to look for it.

BASSETT & SHEPARD,
65 *For Plaintiff.*
GIDDINGS & MORRISS, &
BREEDLOVE & EWING,
For Defendants.

Approved Aug. 4th, 1876.

E. B. TURNER.

The foregoing contains a correct statement of all the facts as agreed on by the parties, and the same is hereby approved as such.
August 4th, 1876.

E. B. TURNER,
Judge 16th Dist.

Assignment of Errors. Filed Sept. 25, '76.

JAS. H. HOLT
vs.
J. B. CAMPBELL & Wife, Adm'rs of John Stamps Dec'd.

And now come the defendants and make the following assignment of errors in the above cause:

1st. The court erred in overruling defendants' exceptions to
66 plaintiff's petition, as shown in bill of exceptions, the court holding that it did not appear from the petition that plaintiff's claim was barred by limitation.

2nd. The court erred in the charge in chief given to the jury, especially in that part where the court charges that plaintiff was entitled to recover for the hire of the negroes till emancipation, or so long as John Stamps had their services. In this connection the court should have submitted to them whether the plea of defendants were true or not that Mallie Stamps never made any claim for the hire, and whether the same had been settled.

3rd. And for the same reason the court erred in that part of the charge instructing the jury unqualifiedly that plaintiff was entitled to receive $\frac{1}{8}$th interest in the $5,000.00 and interest thereon received by the deceased John Stamps for the land sold Fluellen.

4th. The court erred in refusing the 1st, 2nd, 3rd, 4th, 5th, & 6th charges asked by the defendants, as shown by bill of exceptions. The special error assigned in the 1st refused charge
67 is that the court refused to charge that the statute of limitations commenced to run against plaintiff's cause of action Sept. 2d,

1866, and that plaintiff's claim would be barred in two years from that date unless he should show some supervening disability in the plaintiff or his testator by which the statute was arrested during that time.

5th. The specific error assigned in the 2 refused charge consists in the refusal of the court to charge that if plaintiff's cause of action was barred at the time the constitution was adopted, such barred claim could not be, and was not, revived by the act of the constitution.

7th. The error complained of in the 4th refused charge is that the court refused to charge, as requested, that neither the Legislature nor a constitutional convention had the power to revive a cause of action when the bar had become complete.

68 8th. The error in the 5th charge asked by defendants is the refusal of the court to charge that the lapse of two years from the 30th March, 1870, before plaintiff's suit was filed, would bar his claim.

9th. The error complained of in the 6th refused charge is the refusal of the court, under defendants' plea of non-claim and settlement, to submit those issues to the jury, as requested in said 6th charge.

10th. The verdict of the jury is contrary to the law and the evidence.

11th. The verdict and judgment is excessive.

12th. The judgment should have been for the defendants.

13th. The court erred in refusing a new trial, and should have granted it for the reasons stated in said motion.

GIDDINGS & MORRISS.

69 *Clerk's Certificate.*

THE STATE OF TEXAS, *Washington County:*

I, J. L. Moore, clerk of the district court of Washington county, do hereby certify that the annexed and foregoing sixty-two pages, from one to sixty-two, and both numbers inclusive, contain a true and correct transcript from the record of all proceedings had in cause No. 4830 on the civil docket of the district court of said county, wherein James H. Holt is plaintiff and Moina Campbell and J. B. Campbell, adm'rs of the estate of John Stamps, dec'd, are defendants.

Witness J. L. Moore, clerk of the district court of Washington county.

Given under my hand and the seal of said district court, at office, in the city of Brenham, this Sept. 25th, A. D. 1876.

[SEAL.] J. L. MOORE,
Clerk D. C., Washington Co.

70 CAMPBELL & Wife, Adm., *v.* JAMES H. HOLT.

Appeal from Washington.

This suit was instituted by the appellee (Holt), as sole devisee and executor (without bond) of his deceased wife, Malvina or Mallie

Stamps, to recover of appellants, administrators of the estate of John Stamps, dec'd, a large amount alleged to be owing from said estate for the hire of negroes belonging to said Mallie, which remained in the possession of John Stamps, her father, while she was a minor, and were used and controlled by him for his own benefit from 1 January, 1858, to 1 July, 1865; and also for a one-sixth interest in the purchase price received by her father from one Flewellyn on the sale to him of a tract of land, which was community property of her father and mother, sold after the death of her mother, that being her proportional share thereof.

A claim duly verified for these amounts, stating them particularly, was made out and presented to the administrators on 8 May, 1874, and by them rejected, and then this suit was brought. The
71 defendants pleaded the statute of limitations, and averred that this was a stale demand. They set up that Stamps had a settlement and division among his children of the estate of their deceased mother; that she acquiesced in the sale of the land to Flewellyn; that she was satisfied with the division of her mother's estate; that he had fed, clothed, and supported her and her negroes, whose labor was worth no more than the care of them, &c.; that she never claimed any account against him for the hire of them, and that if she did it had been fully settled and discharged.

The case was submitted to a jury. The judge instructed them, "There is no limitation in this case." He also instructed them generally as to the right of plaintiff to recover as the proof might warrant

The charges asked by defendants upon the subject of limitations were refused.

A charge asked upon the effect of non-claim, hereafter to be noticed, was also refused.

The jury returned a verdict for plaintiff for $8,692.93. The defendants moved for a new trial, which, being overruled, the case is brought up by appeal.

72 There are thirteen assignments of error. They present, however, but two or three principal questions for our determination and these only will be considered.

I.

It is insisted that the plaintiff's claim is a stale demand, and is barred by the laws of limitation.

It appears that Mallie Stamps attained her majority on 1 January, 1863, and at that date the right of action for the recovery of the demands in controversy accrued to her. She was married the 6th December, 1866; she died on 11 Oct., 1873, being then a married woman. On the 25 Ap'l, 1874, the claim in this suit, properly authenticated, was by her executor presented to the administrators of Stamps and by them rejected, and this suit was instituted on 18 May, 1874.

By the statute of 1866, it was provided that the laws of limitation which had been suspended during the war shall again com-

73 mence running on the 2 September, 1866, at which time Mallie Stamps was under no disability; so that at the time of the acceptance of the constitution of 1869 a period of more than three years had elapsed, and her claim was then, and would have continued, wholly barred by limitation, unless prevented or revived by the provisions of that constitution. By sec. 14, art. 12, minors and married women were not barred by any laws of limitation of less than seven years from the removal of their disabilities.

And by sec. 43, art. 12, it was declared that all statutes of limitation were suspended from 28 Jan., 1861, until the acceptance of the constitution by the Congress of the United States. This 43d sec., art. 12, of the constitution has been the subject of much discussion, and its proper construction has been so frequently adjudicated that it is not now an open question. Very able briefs have been filed in this case, questioning the interpretation put upon it in the leading case of Crawford *vs.* Bender, but we can conceive no good end to be attained by reopening the discussion. Whatever our individual
74 views might be of the conclusion reached in that case, it must now be regarded as settled law. Rivers *v.* Washington, 34 Tex., 267; Dwight *vs.* Overton, 35 Tex., 390; Mosely *v.* Lee, 37 T., 479; Bentinck *v.* Franklin, 38 Tex., 458; Wood *v.* Wilder, 42 Tex., 396.

In the latter case the court say: "We regard the question of the effect of sec. 43, art. XII, of the constitution of the State, declaring the suspension of the statute of limitation of civil suits from January 28, 1861, until the acceptance of the constitution by the Congress of the United States, as now too well settled by adjudications of this court, and as having been too long acted upon to be now disturbed."

And in the recent case of Lewis *vs.* Davidson, 51 Tex., 257, Bender *v.* Crawford, and the cases which followed it, are again affirmed "as the settled law of this court."

We must hold, therefore, that as the constitution of 1869, as construed by the Supreme Court, had the effect of suspending the operation of the statute of limitations from January 28, 1861, to March 31, 1870, and of even reviving claims which otherwise would have
75 been barred, the defense of limitations set up in this case against the plaintiff's demand must fail. The claim of Mrs. Holt was protected by the constitution, and there was, therefore, no error in the judge so charging the jury.

II.

The other objection urged is the refusal of the judge to submit to the jury the 6th instruction asked by the defendants, which is as follows:

"If the jury believe, from the evidence, that Malvina Stamps never intended to charge her father with the hire of her negroes, and never made any claim therefor, the plaintiffs, as her legal representatives, or her legatee, cannot make that a debt or charge against the estate of her father which she never intended to be such."

We have examined with great care the statement of facts, and are of opinion that there was no testimony which would warrant the

giving this instruction to the jury, even if we admit it to be a correct exposition of the law applicable to the case.

76 The only testimony bearing upon this subject is that of Mrs. Campbell, the sister of Mallie Stamps. She says: "I never heard her express any dissatisfaction with her division of the land in any way. I think she was very well satisfied. I never knew he- setting up any claim against her father for the hire of her negroes. She never expressed herself to me in any way, showing dissatisfaction with her father's management of the business. She seemed to be satisfied, and to think that father did the best he could. She never made any claim against him for the hire of her negroes." Now, this testimony is altogether negative. It is as if she had answered respecting Mallie's claim for hire, "I don't know." And when it is remembered, as the testimony discloses, that Mrs. Campbell was married in 1857; that she moved upon her own land in 1858, and from that date was no longer a member of Stamps' family; that it is not shown what her opportunities of gathering information of Mallie's mind were; that Stamps died in two or three years

77 after Mallie arrived of age, and a few months after her marriage, it will be seen how utterly worthless this sort of testimony would be to establish a release of Mallie's claim. It was altogether of too vague and unsubstantial a character to found a charge upon. It could support no issue in the case. We could not hesitate to set aside a verdict for the defendant found upon testimony of this character. And we therefore think the refusal of the judge to give the charge asked affords no just cause of complaint.

It is error to charge upon a hypothesis which has no foundation in the evidence. (Earle *v.* Thomas, 14 Tex., 592; Yarbrough *v.* Tate, 14 Tex., 483.)

And where there is either no evidence or none competent to support any natural issue in the case, it is not error in the court to instruct the jury so. (Roddy *v.* Kusbury, 5 Tex., 150; Handy *v.* DeLeon, 5 Tex., 211; McGreal *v.* Wilson, 9 Tex., 429.)

Again, Mallie's claim for the hire of her negroes, and the portion of the money received by her father from Flewellyn as the

78 price of the community land sold to him after her mother's death, was a legal claim.

She was the owner of the property, and entitled by law to recover it, and the hire of it.

Her father's liability was a legal liability; and we have been referred to no authority, and certainly have been furnished with no good reason to justify the conclusion that a legal liability could be discharged by proof of the owner's intention not to enforce it, or that in this case Mallie's right to recover from her father's estate the amount justly due her was lost because she forebore to harass him by pressing it upon his attention in the last years of his life. (Grooms *v.* Rust, 27 Tex., 231; Buckley *vs.* Howard, 35 Tex., 216; Lewis *v.* Castleman, 27 Tex., 421.)

In support of the proposition in the charge as asked we are referred to the case of Schnell *v.* Schroeder, 1 Bailey's Eq. Rep., 338, but the sentence from which the language of the proposed instruc-

tion is taken will, of itself, show its want of analogy. It is there said: "It is clear, from the circumstances, that it was never
79 intended that Boyer should pay for his board in Schroeder's [family,] into which he was received as a relative and friend, and if originally a gratuity, it cannot now be set up as a debt." This observation might with much greater propriety be cited as applicable to the offset claimed for Mallie Stamps' support and education as a debt due her father, upon whom the law imposed this charge, than as at all in point to sustain the proposition that her unexpressed intention not to make a charge against her father's estate was a release of her legal claim against it.

This disposes of the questions presented on the briefs and argument of the appellants, and upon which they mainly rely for a reversal of the judgment.

The general assignment that the judgment is against the law and evidence is too vague and indefinite to require discussion or impose upon us the necessity of its consideration.

But looking into the transcript we are satisfied that the evidence fully warranted the verdict of the jury.

That Stamps retained the possession of his daughter's
80 shares from the time alleged of the division had of his deceased wife's estate among her children, and had the use and services of them from 1st January, 1858, until they were set free in 1865, and the value of their hire, was fully proven. That he sold to Flewellyn a tract of community land after the death of his wife and received the money for it, of which Mallie Stamps' share was one-sixth, was also proven. And we think there is nothing in the testimony to support the assumption that from the liability resulting from these transactions upon the part of Stamps to his daughter there had ever been any settlement, satisfaction, or release. The paper introduced signed by Mallie Stamps, viz: "The division made of my mother's land is satisfactory to me," dated 9th Feb., 1866, and the release executed to Flewellyn of all interest in the land sold him and which Stamps promised she would execute on her coming of age, it would seem very clear cannot be strained in a way to mean a *a* discharge to her father of her right to recover from him for the hire of her negroes, or her portion of the Flewellyn money.

The conveyance made to Mallie Stamps of the 240 acres of
81 Stamps' land mentioned in the statement of facts was manifestly made to make equal the share of Mallie to that of her brother and sister in the division of the lands of her mother.

But if there were room for doubt upon these subjects, the verdict of the jury is decisive for the appellee.

We are of the opinion that there is no error in the judgment, and that it ought to be affirmed, and so award.

QUINAN, *J.*

82 Be it remembered that at a term of the supreme court of the State of Texas, begun and holden at the city of Austin on the 2nd day of April, A. D. 1877, present, Hon. O. M. Roberts, chief justice, and Hon. George F. Moore and Hon. R. S. Gould, asso-

ciate justices, the following among other proceedings were had, to wit:

Appeal from Washington.

TUESDAY, *April* 17*th*, 1877.

CAMPBELL *et al.*, Adm'rs,
vs.
HOLT. } 3386.

Submitted on briefs of both parties.

And afterwards, to wit, at a term of the supreme court of the State of Texas, begun and holden at the city of Austin, on the 5th day of April, A. D. 1880, present, Hon. George F. Moore, chief justice, and Hon. R. S. Gould and Hon. M. H. Bonner, associate justices, the following among other proceedings were had, to wit:

Appeal from Washington.

WEDNESDAY, *April* 28*th*, *A. D.* 1880.

CAMPBELL *et. al.*, Adm'rs,
vs.
HOLT. } 3386.

83 In this cause, motion to that effect having been filed and submitted, and the consent in writing required by the statute, having been also filed, it is ordered by the court that said cause be referred to the commissioners of appeals of the State of Texas.

Be it remembered, that at a term of the hon. commissioners of appeals of the State of Texas, begun and holden at the city of Austin, on the 8th day of April, A. D. 1880, present, Hon. R. S. Walker, Hon. George Quinan, and Hon. A. S. Walker, Hon. R. S. Walker, presiding, the following among other proceedings were had, to wit:

MONDAY, *May* 10*th*, 1880.

CAMPBELL & CAMPBELL, Adm'rs, *vs.* JAS. H. HOLT.

From Washington.

Submitted on oral argument and briefs for both parties.

And afterwards, to wit, on the 24th day of May, A. D. 1880, the following among other proceedings were had, to wit:

Opinion of the Court, Delivered by Judge Quinan.

84 MOINA & J. B. CAMPBELL, Adm'rs, Appellants,
vs.
JAMES H. HOLT, Appellee. } 85–3386.

Appeal from Washington.

This cause coming on to be heard before the commissioners of appeals, upon reference thereof by consent in writing of the attorneys

of both parties, and the same having been duly considered, said commissioners award and determine that there was no error in the judgment of the district court of Washington county, and that the same shall be affirmed, and that the appellants in due course of administration pay all costs in this behalf expended.

It is further ordered that the clerk of the supreme court and acting clerk of the commissioners of appeals certify this award to the supreme court now holding sessions at Austin, together with the synopsis of the case and opinion here filed, and that the said clerk certify a bill of his costs here accrued and to accrue, to be taxed by the clerk of the supreme court.

85 Be it remembered, that at a term of the supreme court of the State of Texas, begun and holden at the city of Austin, on the 5th day of April, A. D. 1880, present, Hon. George F., Moore, chief justice, and Hon. R. S. Gould and Hon. M. H. Bonner, associate justices, the following among other proceedings were had, to wit:

Appeal from Washington.

FRIDAY, *June 11th*, 1880.

MOINA and J. B. CAMPBELL, Adm'rs, Appellants,
vs.
JAMES H. HOLT, Appellee. } 3386.

This cause having been referred to the commissioners of appeals for their decision, and said commissioners having awarded that there was no error in the judgment, and that the same should be affirmed, it is therefore considered, adjudged, and ordered that the judgment of the court below be in all things affirmed, that the appellants in due course of administration pay all costs in this behalf expended, and this decision be certified below for observance.

86 CLERK'S OFFICE, SUPREME COURT,
AUSTIN, TEXAS, *May 15th*, A. D. 1882.

I, Chas. S. Morse, clerk of the supreme court of Texas at Austin, hereby certify that the preceding pages from one to eighty-five, inclusive, contain a correct transcript of all the proceedings had in the district court of Washington county, as appears from the transcript of the record on file in my office, and of all the proceedings had in the supreme court and commissioners of appeals of the State of Texas, as appears of record in the minutes of said courts in the cause lately pending in said supreme court, wherein Moina Campbell, administratrix, and J. B. Campbell, administrator, of John Stamps, deceased, were appellants, and James H. Holt was appellee, appeal from Washington county.

In witness whereof I hereunto set my hand and affix the seal of said supreme court at Austin the day and year above written.

[SEAL.] CHAS. S. MORSE,
Clerk Supreme Court of Texas at Austin.

87 MOINA CAMPBELL, Adm'x, and J. B. CAMPBELL, Adm'r of John Stamps, dec'd,
vs.
J. H. HOLT.

To the Hon. William B. Woods, Associate Justice of the Supreme Court of the U. S.:

Your petitioners, Moina Campbell, administratrix, and J. B. Campbell, administrator of the estate of John Stamps, dec'd, respectfully represent that on the 11th day of June, 1880, a final judgment was rendered by the supreme court of Texas in favor of James H. Holt, and against your petitioners in a certain suit therein pending, on appeal from Washington county in said State, wherein said Holt was appellee and your petition-s were appellants, the number of said cause on the docket of said supreme court being 3386. That the said supreme court is the highest court in the State in which a decision of said cause could be made, and the said decision is
87½ final so far as the courts of said State are concerned. Petitioners represent that in said suit, the validity of a clause of the constitution of the State of Texas was drawn in question, on the ground of its being repugnant to the Constitution of the United States, and the decision of said supreme court is in favor of its validity, in which decision your petition-s complain there is error to their great damage. They pray that your honor will allow the writ of error herewith submitted, and as in duty bound will ever pray.

A. D. WILLIE,
Att'y for Petitioners.

The writ of error prayed for in the above petition is allowed on petitioners giving bond in the penal sum of five hundred dollars, conditioned according to law.

And a bond in said amount being presented is approved, the writ of error allowed, and citation signed.

Washington, D. C., April 14, 1882.

WILLIAM B. WOODS,
Associate Justice of the Supreme Court of the U. S. & Circuit Justice Fifth Circuit.

Filed in Supreme Court of Texas, May 13, 1882.
CHAS. S. MORSE, *Clerk.*

88 Know all men by these presents, that we, J. B. Campbell & Moina Campbell, as principals, and W. P. Dever, and D. H. Barton, as sureties, are held and firmly bound unto James H. Holt in the full and just sum of five hundred dollars, to be paid to the said James H. Holt, his certain attorney, executors, administrators, and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals, and dated this 11th day of March, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately, at a supreme court for the State of Texas, held at Austin, Texas, in a suit depending in said court between Moina A. Campbell, administratrix, and J. B. Campbell, administrator of John Stamps, deceased, appellants, and the said James H. Holt, appellee, a judgment was rendered against the said Moina A. Campbell and J. B. Campbell, and the said Moina A. Campbell and J. B. Campbell have applied for and prosecuted a writ of error to the Supreme Court of the United States to reverse the aforesaid judgment of the supreme court of the State of Texas, and have also applied for a cita-
89 tion, directed to the said James H. Holt, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such that if the said Moina A. Campbell and J. B. Campbell shall prosecute their writ of error to effect and pay and answer all costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

J. B. CAMPBELL. [L. S.]
MOINA CAMPBELL. [L. S.]
W. P. DEVER. [L. S.]
D. H. BARTON. [L. S.]

Approved April 14th, 1882.

WILLIAM B. WOODS,
Associate Justice U. S. Supreme Court and Circuit Justice, Fifth Circuit.

90 THE STATE OF TEXAS, *Washington County:*

Before me, H. M. Lewis, clerk of the county court of Washington county, Texas, on this day personally appeared D. H. Barton, one of the sureties on the annexed and within writ of error bond, who, being by me duly sworn, states on oath that he is worth the sum of five hundred dollars ($500.00) in his own right over and above all homestead and other exemptions, and over and above all his liabilities of every character whatsoever.

D. H. BARTON.

Sworn to and subscribed before me, this 11th day of March, A. D. 1882.

In testimony of which, I hereto sign my name & affix the seal of the county court of Washington county, the same being my seal of office, on the date above written.

[SEAL.]

H. M. LEWIS,
C. C. C. W. C.,
By C. F. HERBST, *Dep.*

THE STATE OF TEXAS, *Washington County:*

Before me, H. M. Lewis, clerk of the county court of Washington county, Texas, on this day personally appeared W. P. Dever, one of

the sureties on the annexed and within writ of error bond, who,
91 being by me duly sworn, states on oath that he is worth the sum of five hundred dollars ($500.00) in his own right over and above all homestead and other exemptions, and over and above all his liabilities of every character whatsoever.

W. P. DEVER.

Sworn to and subscribed before me, this 11th day of March, A. D. 1882.

In testimony of which, I hereto sign my name & affix the seal of the county court of Washington county, the same being my seal of office, on the date above written.

[SEAL.] H. M. LEWIS,
C. C. C. W. C.,
By C. F. HERBST, *Dep.*

CLERK'S OFFICE, SUPREME COURT,
AUSTIN, TEXAS, *May 15th, A. D.* 1882.

I, Chas. S. Morse, clerk of the supreme court of Texas, at Austin, hereby certify that this and the preceding three pages of writing contain a correct copy of the bond for writ of error to the Supreme Court of the United States, together with the approval thereof, and the certificates of the clerk of the county court of Washington county, Texas, as to the solvency of the sureties on said bond, in the cause lately pending in said supreme court of Texas, wherein Moina Campbell, administratrix, and J. B. Campbell, administrator of John Stamps, deceased, were appellants, and James H. Holt was appellee, No. 3386, appeal from Washington county.

92 In witness whereof, I hereunto set my hand and affix the seal of said court, at Austin, the day and year above written.

[SEAL.] CHAS. S. MORSE,
Clerk Supreme Court of Texas, at Austin.

93 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Moina Campbell, administratrix, and J. B. Campbell, administrator of the estate of John Stamps, deceased, appellants, and James H. Holt, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or
94 of a treaty or statute of or commission held under the United

States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said appellants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the fourteenth day of April, in the year of our Lord one thousand eight hundred and eighty-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
WILLIAM B. WOODS,
Associate Justice U. S. Supreme Court,
and Circuit Justice, Fifth Circuit.

[Endorsed:] Filed in supreme court of Texas April 27, A. D. 1882. Chas. S. Morse, clerk.

95 The United States of America to James H. Holt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Texas, wherein Moina Campbell, administratrix, and J. B. Campbell, administrator of the estate of John Stamps, deceased, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William B. Woods, Associate Justice of the Supreme Court of the United States, this fourteenth day of April, in the year of our Lord one thousand eight hundred and eighty-two.

WILLIAM B. WOODS.

96 On this third day of May, in the year of our Lord one thousand eight hundred and eighty-two, personally appeared John M. Lockett before me, the subscriber, Harry Hancock, one of the United States commissioners for the western district of Texas, and makes oath that he delivered a true copy of the within citation

to James Holt in person on the third day of May, 1882, in the county of Washington & State of Texas.

J. M. LOCKETT.

Sworn to and subscribed the third day of May, A. D. 1882.

H. HANCOCK,
U. S. Comm'r, West. Dist. of Texas.

[Endorsed:] Filed in supreme court of Texas May 13, 1882. Chas. S. Morse, clerk.

Endorsed on cover: Texas sup. court. No. 261. Moina Campbell, administratrix, and J. B. Campbell, administrator of the estate of John Stamps, deceased, plaintiffs in error, *vs.* James H. Holt. Filed 14th September, 1882.

115-620

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Supreme Court of the United States.

October Term 1884.—No. 261.

MOINA CAMPBELL, ADMINISTRATRIX, AND JAMES B. CAMPBELL, ADMINISTRATOR, OF THE ESTATE OF JOHN STAMPS, DECEASED, PLAINTIFFS IN ERROR,

vs.

JAMES H. HOLT, EXECUTOR OF THE ESTATE OF MALVINA HOLT, DECEASED.

Closing Brief for Plaintiffs in Error.

The learned counsel for the defendant in error, if we understand their brief correctly, do not differ from us as to the Federal question in the case; therefore we do not think it necessary to say anything in addition to what we have already submitted in our opening brief upon this point.

The counsel for the defendant in error, however, do not give up the defense. They offer two objections to our case:

FIRST OBJECTION.

That the claim sued on never was barred.

To sustain this proposition, the counsel for defendant here insist that the sixth section of the eleventh ordinance of the Constitution of the State of Texas adopted in 1866 by the State Constitutional Convention of that year is *ultra vires*. The Constitution in question was the Consti-

tution adopted by the Constitutional Convention which was called in 1866 by Provisional Governor Hamilton, under the direction of the then President of the United States.

The sixth section of the ordinance in question provides as follows:

"SEC. 6. *Be it further ordained*, That in all civil actions the time between the 2d day of March, 1861, and the 2d day of September, 1866, shall not be computed in the application of any statute of limitation."

See Constitution of Texas, 2d edition, 1884, pp. 342–3.

This sixth section was the provision of law by which the statutes of limitation were set in motion after the Civil War was ended and under which the claim in this case was barred. The counsel for the defense insist that this sixth section is *ultra vires*, on the ground that a "convention cannot assume legislative power," and refer to Jameson on the Constitutional Convention as supporting the objection.

Much may be said on both sides of this question as an abstract question, but we do not deem it necessary to discuss it, inasmuch as the ordinance in question is held by the Supreme Court of Texas to be of force.

In reference to this question, the court says:

"According to the ordinances of the *Convention of* 1866, *which have been recognized by our Supreme Court, limitation ceased March* 2*d*, 1861, and did not commence again until *September* 1*st*, 1866."

Revers *v.* Washington, 34 Tex. R., 271.

The Ordinance No. 11, section 6, now under consideration, being recognized as valid by the Supreme Court of Texas, its action is conclusive here.

The construction given to a provision of a State Constitution by the highest court of that State, not called in

question by any conflicting decision, is conclusive on the Federal Courts.

Randall *v.* Brigham, 7 Wall., (U. S.,) R., p. 523.

The decision of the highest court of a State, that a State law is not in conflict with its Constitution is conclusive on a Federal Court.

Geet *v.* Minnesota, 9 Wall. R., 35.

The section 6 of Ordinance 11 of the Constitution established by Texas Convention of 1866, which we have been considering, being, as we have seen, recognized as valid by the Supreme Court of Texas, the objection raised by the counsel of the defendant in error to our case, on the ground that this section of the ordinance under considera- is *ultra vires*, falls to the ground, and may be dismissed from further consideration.

Second Objection.

The second objection raised on behalf of the defendant in error is that the judgment of the Supreme Court of Texas was based on the award of arbitrators selected by the parties to the suit, and is conclusive upon them. To this objection we answer as follows:

While this case was pending in the Supreme Court of Texas on appeal it was, by consent of the parties, referred to the Commissioners of Appeals, a judicial tribunal; this reference being authorized by a statute of the State of Texas approved July 9th, 1879, which declares that "said Commission shall report its conclusions or award to the Supreme Court; and the conclusions or award 'of said Commission' *shall be and become the judgment of the said Supreme Court.*"

Laws of Sixteenth Legislature, Extra Session, chap. 34, Appendix to Revised Statutes of Texas, p. 45.

This case was on the docket of the Supreme Court. There were two ways provided by which the Supreme Court might make up its judgment: One, by hearing argument, and thereupon rendering its judgment, or by reference of the case to the Commissioners of Appeals, and adopting and making their decision its judgment.

AS TO THE "COMMISSION OF ARBITRATION AND AWARD."

It is a judicial tribunal. The "Commissioners" have power "to hear and pronounce award" on *all* civil cases "*pending* in the Supreme Court," when the *parties consent* in writing.

The *Commission* "*to report its award to the Supreme Court.*"

The award to "*be and become the judgment of the Supreme Court.*"

The *Supreme Court* "to *make* and *render* such further orders, *judgments*, or decrees as may be necessary and proper to make said award effective."

> Laws of Sixteenth Texas Legislature (July 9th, 1879), Extra Session, chap. 34, Appendix to Revised Statutes of Texas, p. 45.

Under this condition of things, we submit that the consent of the parties litigant to refer the case to the Commissioners of Arbitration only bound them to recognize the judgment of the Commissioners of Arbitration adopted by the Supreme Court as effective in every respect as the judgment the Supreme Court might have rendered on hearing the case itself, but no more so.

When the judgment of the Supreme Court of Texas was rendered by adoption of the award of the Commissioners of Arbitration the litigation in the State Courts was ended and the jurisdiction of the State Courts was exhausted.

At this point the jurisdiction of the Federal Supreme Court comes in, because it finds the judgment of the high-

est court of a State on a Federal question which has arisen in a State Court, and been decided in such a manner as to authorize revision by the Supreme Court of the United States.

If the judgment which the Supreme Court of Texas might have rendered in this case on hearing the case itself was subject to the operation of the writ of error from the Supreme Court of the United States as a Federal question, then we say the award adopted by the Supreme Court of Texas as its judgment was also subject to the writ of error of this court. All judgments of the Supreme Court of a State involving a Federal question are subject to review here; the effect of the reference in this case operating no further than the attainment of a judgment of the Supreme Court of the State, the ultimate determination of the Federal question resting in the Supreme Court of the United States.

The consent to refer, implied conclusiveness, subject to the revisory jurisdiction of this court over the decision of the Court of Arbitration and the judgment of the Supreme Court of Texas founded thereon.

This objection is inapplicable to the present case.

If we were before a Texas court, and were insisting that the judgment of the Supreme Court of Texas in the case below was not conclusive, then it would be proper to remind us that we were bound by the submission to the Commission of Awards and the judgment based on it.

But here in this present case, in the new case brought here by Federal writ of error, such objection is out of place.

So far from objecting to the judgment founded on the award, we consider it a necessary jurisdictional fact in the present case.

The writ of error from this court acquires its jurisdiction because the Commission of Awards and the judgment based on it determine the Federal question adversely to our contention.

The judgment of the Supreme Court of Texas in favor of the validity of the State Constitution, in the particular in which the defendant in the court below alleged unconstitutionality, was necessary to authorize the writ of error from the Supreme Court of the United States.

The defendant below necessarily, for the purpose of obtaining Federal jurisdiction here, had to admit that the Supreme Court of Texas, adopting the award, made its judgment against the claim of the defendant below to protection from a certain provision of the Constitution of the United States

The reference to the Commission of Arbitration was not a reference to private referees. It was a reference by one court to another court for hearing, in conformity to the local law.

The consent to refer was that one court should decide the case instead of another court, both courts acting as appellate courts; the decision to be made by one court and adopted by the other. When this was done, the decision made by the Commissioners of Appeals, and adopted as its judgment by the Supreme Court, all the legally possible purposes of the consent to refer were accomplished. The decision by the Commissioners was made the decision adopted by the Supreme Court as its judgment, and thus everything intended by the consent reference, either directly or impliedly, was accomplished, and the judgment adopted by the Supreme Court was in every respect as much subject to review here as if the judgment of the Supreme Court of Texas had been rendered by it without reference to the Commissioners of Appeals.

Conclusions.

The reference of the case to the court known as "The Commission of Arbitration" has not deprived plaintiffs in error here of the jurisdiction of this honorable court, and this for several reasons:

1. The Commission of Arbitration had no power to decide conclusively the Federal question involved in the case; that question could only be authoritatively determined by the Supreme Court of the United States.

2. Submission to arbitration is necessarily limited by the jurisdiction of the court to which it is submitted. A State court cannot be vested with power, exclusive of the Federal judiciary, to decide conclusively a Federal question arising in the case.

3. The parties here, in referring this case to arbitration, with its incipient Federal question, by necessary implication reserved whatever right they had or might have to claim the revisory jurisdiction of the Supreme Court of the United States. They bound themselves only to admit the conclusiveness of the award and judgment founded thereon, so far as the State law of Texas was concerned. They were just as free to invoke the jurisdiction of the Supreme Court of the United States on the Federal question involved as if the case had not been referred to the Commission of Awards, but had been decided by the Supreme Court of Texas.

4. There is no evidence that plaintiffs in error ever intended to relinquish their right to invoke the jurisdiction of the Supreme Court of the United States. On the contrary, the record in the case shows the reverse.

5. Plaintiffs in error here are not estopped by the submission to the Court of Arbitration from invoking the jurisdiction of the Supreme Court of the United States, as the legal effects of submission were fully attained by the award of the "Commission of Awards" and the adoption of the award as the judgment of the Supreme Court of Texas.

6. The award having become the judgment of the Supreme Court of Texas, and this judgment involving a Federal question, the jurisdiction of the Supreme Court of the United States attaches, although the judgment of the Supreme Court of Texas was based on the award of arbitrators. This court acquired jurisdiction when the final judgment of the Supreme Court of Texas was rendered. This court does not inquire as to how the final judgment of the Supreme Court of Texas was arrived at. It is sufficient for jurisdiction here if there was a Federal question involved in the case below, and that it was so decided by the Supreme Court of Texas as to gain the jurisdiction of this court, though the judgment of the Supreme Court of Texas was adopted from the Court of Awards.

7. The "Commission of Awards" and the Supreme Court of Texas had no jurisdiction to determine finally the Federal question involved in the case, and could not acquire it, as consent cannot give jurisdiction.

W. W. Boyce,
Counsel for Plaintiffs in Error.

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Supreme Court of the United States.

October Term 1884.—No. 261.

MOINA CAMPBELL, ADMINISTRATRIX, AND J. B. CAMPBELL, ADMINISTRATOR OF THE ESTATE OF JOHN STAMPS, DECEASED, PLAINTIFFS IN ERROR,

vs.

JAMES H. HOLT, DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Texas.

BRIEF OF COUNSEL FOR THE PLAINTIFFS IN ERROR.

1.—STATEMENT OF THE CASE.

This case is brought here under ch. II, section 709, Revised Statutes of the United States, by writ of error to the Supreme Court of the State of Texas.

The question in the case is, whether after a claim had become barred by the then existing statutes of limitations in the State of Texas the same claim could be deprived of its quality of being barred and made subject to suit by reason of a provision made to that effect in a new constitution of the State of Texas adopted after said claim had become and was barred.

On the trial of the case in the District State Court the following proceedings were had:

The defendants below asked for the following charges:

"1st. The defendants ask the court to charge the jury that the statute of limitations commenced to run on the 2d of September, 1866, and so continued to run until the adoption of the Constitution, by a vote of the people, on the 30th of November and the 1st, 2d, and 3d days of December, 1869, and that an open account, due the 2d day of September, 1866, would be barred in two years from that date; and unless the plaintiff has shown some supervening disability by which the running of the statute was arrested during that time, the claim is barred, and you will find for the defendants.

Record, p. 15.

"2d. If the evidence shows that the plaintiff's demand was barred at or before the adoption of the Constitution by the people on the 3d day of December, 1869, then the provision of the Constitution suspending the operation of the statute from 1861 to the 30th of March, 1870, could not and would not revive the plaintiff's cause of action.

"3d. Neither an act of the Legislature of this State nor an act of a constitutional convention of this State can take from a citizen thereof a *vested right*, nor can they impair the obligation of a contract.

"4th. When the bar to an action has become complete, neither the Legislature nor a constitutional convention of this State can revive such cause of action."

All of which charges were refused.

Record, p. 14.

The bill of exceptions certifying the above charges asked for by the defendants below, and their refusal by the presiding judge, are found in the Record, p. 15.

It appears from the statement of facts agreed upon in the court below that plaintiff's testatrix, Mollie Stamps, was born about the 1st of January, 1842.

Record, p. 21.

She was married in December, 1866.

Record, p. 20.

From the assignment of errors in the District Court it appears as follows:

"4th. The special error assigned in the first refused charge is, that the court refused to charge that the statute of limitations commenced to run against plaintiff's cause of action September 2d, 1866, and that plaintiffs claim would be barred in two years from that date, unless he should show some supervening disability in the plaintiff or his testator by which the statute was arrested during that time.

"5th. The specific error assigned in the second refused charge consists in the refusal of the court to charge that if plaintiff's cause of action was barred at the time the Constitution was adopted, such barred claim could not be, and was not revived by the act of the Constitution.

"7th. The error complained of in the fourth refused charge is, that the court refused to charge as requested, that neither the Legislature, nor a constitutional convention had the power to revive a cause of action when the bar had become complete."

Record, pp. 25, 26.

On appeal the commissioners of appeal held as follows:

"It appears that Mollie Stamps attained her majority on the 1st of January, 1863, and at that date the right of action accrued to her. She was married the 6th of December, 1866." * * *

Record, p. 27.

"By the statute of 1866 it was provided that the laws of limitation which had been suspended during the war shall again commence running on the 2d of September, 1866, at which time Mollie Stamps was under no disability; so that at the time of the acceptance of the Constitution of 1869, a period of more than three years had elapsed, and her claim was then, and would have continued, wholly barred by limitation, unless prevented or revived by the provisions of that Constitution.

"And by section 43, article 12, Record, pp. 28, 29, (of this Constitution,) it was declared that all statutes of limitation were suspended from January, 1861, until the ac

ceptance of the Constitution by the Congress of the United States. * * * (Record, pp. 27, 28.)

"We must hold, therefore, that as the Constitution, as construed by the Supreme Court, had the effect of suspending the operation of the statute of limitations from January 28th, 1861, to March 31st, 1870, and of even reviving claims which otherwise would have been barred, the defense set up in this case must fail. *The claim of Mrs. Holt was protected by the Constitution, and there was therefore no error in the judge so charging the jury.*"

Record, p. 28.

It is proper to remark that by the consent of both parties below the cause was referred to the commissioners of appeals of the State of Texas; and the cause being heard before said commissioners, the said commissioners determined that there was no error in the judgment of the District Court, and the same was affirmed. (Record, pp. 31, 32.)

This decision of the said commissioners being certified to the Supreme Court of the State of Texas, it was adjudged by said Supreme Court that the judgment of the court below be in all things affirmed. (Record, p. 32.)

We submit, from the above references to the Record, that a question has arisen as hereinbefore mentioned, and been determined in the Supreme Court of Texas, the determination of which question was essential to the determination of the cause; and which question, if determined favorably to the defendants below, necessitated a decision in their favor exempting them from the debt claimed of them.

That question was whether a right of action barred by lapse of time in the State of Texas could be revived by a provision subsequently enacted in the Constitution of that State.

The defendants below insisted that such provision in the Constitution of the State of Texas was null and void by reason of its being forbidden by the Constitution of the United States, but the decision of the said Supreme Court

of Texas was against the title, right, privilege, or exemption claimed by said defendants below.

Under this condition of the case we submit that the plaintiffs in error here are entitled to claim the jurisdiction of this honorable court in the determination of their rights in the premises.

2.—Specification of Errors.

(2.) The court below erred in holding that section 43, article 12, of the Constitution of the State of Texas was in accord with the Constitution of the United States, whereas the said section 43, article 12, of the said State Constitution was expressly prohibited by a clause in Fourteenth Amendment to the Constitution of the United States.

The said section 43, article 12, of the Constitution of Texas, is in the words following, to wit:

"The statutes of limitation of civil suits were suspended by the so-called act of secession of the 28th of January, 1861, and shall be considered as suspended within this State until the acceptance of this Constitution by the United States Congress."

By this provision a right of action which was barred by lapse of time, as in this case, was sought to be revived.

The clause of the Constitution of the United States which forbids this legislation is as follows:

"Nor shall any State deprive any person of life, liberty, or property without due process of law."

Fourteenth Amendment of the Constitution of the United States.

3.—Argument.

The question for consideration is whether the claim sued on in this case, a pecuniary claim, barred at one time by the law of limitations, could by a subsequent amendment

of the Constitution of Texas be deprived of its quality of a barred claim and made subject to suit.

We say this amendment of the Constitution of Texas is rendered null and void by the provision in the Fourteenth Amendment of the Constitution of the United States, which declares:

"Nor shall any State deprive any person of life, liberty, or *property* without due process of law."

(3.) What is the legal effect of a barred claim as to the title of the property claimed?

The title to the property claimed is thereby vested in the party against whom the claim is brought.

See the authorities, as follows:

If A has had possession of lands for twenty years without interruption, and then B gets possession, upon which A is put to his ejectment, though A is plaintiff, yet the possession of twenty years shall be a good title in him.

2 Salk, 421.

Pederich *v.* Searle, 5 S. & R., 240.

It is now settled that a devise in trust for payment of debts will not revive a debt upon which the statute of limitations has taken effect before the testator's death.

Burke *v.* Jones, 2 Ves. & B., 275.

Brown *v.* Griffiths, 6 Munford, 450.

Lovelass on Wills, p. 313, note 7, 11th edition by Gow.

Five years uninterrupted adverse possession of a slave not only bars the remedy of the former owner, but vests the absolute legal right in the possessor.

Smart *v.* Baugh, 3 J. J. Marshal, 363.

Newby *v.* Blakey, 3 H. & M., 57.

Shelby *v.* Guy, 11 Wheat., 301.

Mortimer *v.* Mure, 2 Brennan, 189.

Clarke *v.* Butler, 7 J. J. Marsh., 194.

Doyle *v.* Borden, 7 Alabama, 248.

Actual and exclusive possession to land gives title to it under the statute of limitations.

Middleton *v.* Dupries, 2 Nott. & McCord, 310.

A title, under the statute of limitations, in a third person, which would bar the plaintiff, if such person were the defendant, will defeat his recovery against any other person.

Faysowy *v.* Prather, 1 N. & M., 296.

A will directing all the just debts of a testator to be paid will not authorize the payment of a debt barred by the statute of limitations.

Peck *v.* Botsford, 7 Conn. R., 420.

Where a right of action is barred by the statute of limitations a repeal of the statute does not revive the right of action, but it is forever gone. The right to make such a defense is a vested right which cannot be divested.

Davis *v.* Minor, 1 How. (Miss.), 183.

A repeal of the statute of limitations is void so far as it respects claims already barred.

Woart *v.* Wennick, 3 N. H., 473.

So of a resolve authorizing a particular creditor to bring a suit, notwithstanding his claim was barred by the statute of limitations, and suspending that statute in the particular case.

Holden *v.* James, 11 Mass., 396.
Bradford *v.* Brooks, 2 Ark., 284.
Lewis *v.* Webb, 3 Greenl., 326.

When the period prescribed by the statute has once run, so as to cut off the remedy which one might have had for the recovery of property in the possession of another, the title to the property, irrespective of the original right, is

regarded in the law as vested in the possessor, who is entitled to the same protection in respect to it which the owner is entitled to in other cases. A subsequent repeal of the limitation law could not be given a retroactive effect so as to disturb this title. It is vested as completely and perfectly, and is as safe from legislative interference, as it would have been had it been perfected in the owner by grant or by any species of assurance.

Cooley on Limitations, (5th ed.,) p. 449.

The opinion of Judge Cooley, just above declared, is sustained by reference to the following cases:

Holden *v.* James, 11 Mass., 396.

Wright *v.* Oakley, 5 Met., 400.

Lewis *v.* Webb, 3 Me., 111.

Atkenson *v.* Dunlap, 50 Me., 111, and many other cases referred to in Cooley on Lim., pp. 449, 450, note 5.

Chief Justice Dixon, of Wisconsin, holds, in regard to the opinion sometimes expressed, that the bar of the statute as to pecuniary claims is not as full as claims to lands, as follows:

"A statute which is held to extinguish the right in one class of cases, as when property is adversely claimed and possessed, must, its language being the same, also be held to extinguish the right where the subject upon which it operates is a claim or demand founded upon contract. And so we find it to have been decided by those courts which hold, as we have done, with respect to the operation and effect of the statute. They decide that the debt or obligation created by the contract is extinguished so that it cannot be revived without the assent of the party to be charged. (See cases referred to in 11th Wisconsin, 440. We know of no case to the contrary except Jones *v.* Jones, 18 Ala., 242; Brown *v.* Parker, 28 Wisconsin, pp. 21, 28.")

"The lapse of the time fixed by the statute of limitations of this State does not merely affect the remedy, but

extinguishes the right, and this applies to contract debts as well as to claims to property. The principle must be the same in all classes of actions. It seems to be impossible to make a distinction upon any sound reasoning to be applied to the subject."

Idem., pp. 21, 28.

A claim of a pecuniary character, after the statute has run, cannot be treated otherwise than a claim of title to property adversely possessed.

Rockfort *v.* Walden, 54 N. H., 167.
McMerty *v.* Morrison, 62 Mo., 140.
Goodman *v.* Munks, 8 Porter, (Ala.,) 84.
Harrison *v.* Stacy, 6 Rob., (La.,) 15.
Baker *v.* Stonebaker, 36 Mo., 338.
Shelby *v.* Guy, 11 Wheat., 361.

Transfer to the United States of a claim already barred by the statute will give it no greater validity than it had before the transfer.

Smith *v.* United States, 5 Peters, 293.
United States *v.* Buford, 3 Peters R., 29.

The lapse of time given by statute for bringing ejectment not only bars the remedy, but extinguishes the right, and vests a perfect title in the adverse holder.

Leffingwell *v.* Warren, 2 Black., (U. S. R.), 599.
Holtzapple *v.* Phillibaum, 4 Washington C. C., 357.

Referring to the act of 3 and 4, W. 24, c. 27, which provides in its thirty-fourth section that if suits are not brought within the time limited the title of the claimants should be extinguished, Mr. Tomlin remarks: "The former statutes of limitation were held not to bar the right, but only the remedy. (Citing 1 Saunders (William's Notes), p. 283 a. n.; 2 B. and Ad. 413.) The present act has wisely put an end to such an *absurd* distinction."

Tomlin's Law Dictionary, vol. 2, p. 461.

A right, to have become a vested right, must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a *legal exemption from a demand made by another.*

Cooley's Lim., 448.

See, further, Werdenger *v.* Spruance, 101 Ill., 278.

Wanser *v.* Atkinson, 43 N. J., 571.

It is certain that he who has satisfied a demand cannot have it revived against him.

And he who has been released from a demand by the operation of the statute of limitations, is equally protected.

In both cases the demand is gone, and to restore it would be to create a new contract for the parties—a thing quite beyond the power of legislation.

Cooley's Lim., p. 455.

From the authority cited, we think we are authorized to conclude that when land is claimed ~~as~~ specific personal property that the barring by the statute of limitations gives to the persons against whom the claims are brought a title to the real and personal property claimed.

As to pecuniary claims, we can see no reason in principle why the bar of the statute should not equally confirm title in the persons against whom the claims are made. In the case now under consideration the plaintiff below claims that certain moneys were received by the defendants below which legally belonged to plaintiff below. The running of the statute barred the claim in question, and the legal effect of such barring should be, we submit, to confer a title on the defendants below to the money the subject of suit, as strong in law as if the claim had been for land. If such is the legal status of the claim in question, then the property of defendants below has been taken from them by the amendment of the State Constitution as much in violation of law as if the matter in dispute had been land.

But in any aspect of the case, the defendants below, after the claim against them was barred, were vested with a legal right to be exempt from suit and judgment on the said barred claim. This right, whether we call it a privilege or exemption or a "release," as Judge Cooley calls it, is a *property right* of great value, to wit, of the value of the claim preferred against the defendants below. This privilege, exemption, or "*release*"—the legal result of his claim against them having been barred—is a vested property right protected by the Fourteenth Amendment of the Constitution of the United States.

4.—"Due Process of Law."

Of the protection to property by the law of the land. The protection of the subject in the free enjoyment of his life, his liberty, and his property, except as they might be declared by the judgment of his peers or the law of the land to be forfeited, was guaranteed by the twenty-ninth chapter of Magna Charta, "for which alone," says Sir William Blackstone, "it would have merited the title that it bears of the Great Charter." In some form of words it (this guaranty) is to be found in each of the State constitutions. The language is generally nearly identical, except that the phrases "due process (or course) of law" is sometimes used, sometimes the "law of the land;" but the meaning is the same in every case. And by the Fourteenth Amendment the guaranty is now incorporated in the Constitution of the United States.

Cooley, Const. Limitations, pp. 430, 431, 432.

In the Constitution of the State of Texas the guaranty is as follows:

"No citizen of this State shall be deprived of life, liberty, property, or privileges, outlawed or exiled, or in any

manner disfranchised, except by due course of the law of the land."

Cooley's Constitutional Limitations, p. 431, in note.

The adoption of an amendment to the Federal Constitution nullifies all provisions of State Constitutions in conflict therewith.

Cooley on Lim., p. 14 (note).

The prohibition against taking property "without due process of law" means that the right of the citizen to his property, as well as life and liberty, can be taken away only upon an open, public, and fair trial before a judicial tribunal, according to the forms prescribed by the laws of the land for the investigation of such matters.

9 Opinions of Att'ys-General, p. 200.

Property and life are put on the same footing.

Idem, p. 200.

Where rights are acquired under the existing law there is no power in any branch of the Government to take them away; but where they are held contrary to existing law, or are forfeited by its violation, then they may be taken from him—not by an act of the Legislature, but in due administration of the law itself before the judicial tribunals of the State.

Wynehamer *v.* People, 13 N. Y. R., 393.

What "law"? A pre-existing rule of conduct, not an *ex-post-facto* rescript or decree made for the occasion for the purpose of working the wrong.

Norman *v.* Heist, 5 Watts & Sergt., 193.

2 Kent's Com., 10th ed., 339, 340, and notes.

Conclusion.

We submit that the amendment to the Constitution of Texas made in 1869, suspending the statutes of limitation from 1861 to January, 1870, thus depriving the defendants below of the property, release, or exemption they had obtained from the claim of the plaintiff below, by reason of the claim against them (the defendants below) having, before the adoption of the said amendment of the Constitution of Texas, been barred, is and was null and void, by reason of the Fourteenth Amendment of the Constitution of the United States hereinbefore mentioned.

The judgment rendered against the defendants below was so rendered by authority of said amendment of the said State Constitution, and would not and could not have been rendered but for the said amendment. And as said amendment is null and void as being prohibited by the Fourteenth Amendment of the Constitution of the United States, the judgment below rendered by its authority is and should be declared of no force and effect, and should be set aside.

W. W. Boyce,
Counsel for Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 261.

MOINA CAMPBELL, ADMINISTRATRIX, AND J. B. CAMPBELL, ADMINISTRATOR OF THE ESTATE OF JOHN STAMPS, DECEASED, *Plaintiffs in Error.*

vs.

JAMES H. HOLT, *Defendant in Error.*

Brief for Defendant in Error.

Nature and Result of the Suit:

On the 18th of May, 1874, James H. Holt, defendant in error, instituted this suit in the District Court of Washington county, Texas, against the plaintiffs in error Moina and J. B. Campbell, administrators of the estate of John Stamps, deceased, to recover money due him as sole devisee of his wife Malvina, on an account against her father John Stamps, deceased. There was a verdict and judgment for the plaintiff in the Court below. The case was removed to the Supreme Court of Texas, on appeal by the defendants in the Court below. By consent filed in that Court the case was referred to the "Commission of Appeals of the State of Texas," and on its award, the judgment of the District Court was affirmed.

This writ of error is prosecuted by the defendants in the Court below from the judgment of the Supreme Court of Texas upon the award of the Commissioners of Appeals.

The principal question presented by the writ of error is whether or not plaintiff's cause of action was barred by limitation.

I.

The defendant in error relies upon the following

Proposition:

Plaintiff's cause of action was not barred by limitation at the commencement of this suit.

Statement:

This suit was commenced in the District Court of Washington county, on the 18th of May, 1874, upon an open account for $19,301 97, due Malvina Holt from the estate of her father, John Stamps. (R. p. 1.) Among other matters, the defendants, by an amended answer filed May 28, 1874, plead that the plaintiff's right of action was stale before the commencement of the suit and was barred by the Statute of Limitations. (R. p. 10.)

To this plaintiff replied by an amended petition, filed July 1876, alleging that Malvina Holt, *nee* Stamps, was born on or about the 1st day of January, 1842, and was married to James H. Holt on the 6th day of December, 1866. (R. p. 8.) The truth of these allegations is admitted. (R. pp. 21, 19.)

By the general law of Texas, the Statute of Limitations did not run against minors and married women. (P. D. 4617.)

By an act of the Legislature of the State of Texas, approved December 7, 1861, all laws for the collection of debts were suspended until the 1st of January 1864, or until

six months after the close of the war then existing, should it terminate before the date named, and the term during which the law was in force was not to be computed in any case where the Statute of Limitations came in question. (Laws of 9th Legislature, p. 5: ~~P. D. 1128~~.)

By an act of January, 13, 1862. the Statute of Limitations, so far as it refers to debts and claims due on bills, bonds, promissory notes, and all contracts for the payment of money was suspended until the 1st day of January, 1865, or until six months after the close of the existing war. (Laws of the 9th Legislature, p. 49: P. D. 4630.)

By an act approved February 26, 1863, the Statute of Limitations was suspended until one year after the close of the war, on all civil rights of action of every kind, whether real or personal, except those for injury done the person of another, as of assault and battery, wounding or imprisonment, and for injuries done to the character or reputation of another, as of libel or slander. (Laws of 9th Legislature, p. 6: P. D. 4640.)

The war in Texas closed on the 20th day of August, 1866. (The Protector, 12 Wallace, 700.) The Statute of Limitations in Texas, under the act of December 7, 1861, and January 13, 1862, did not commence to run until February, 1867; and under the act of February 26, 1863, it did not commence to run until August, 1867. From the foregoing statement it appears that Malvina Stamps, under whom the plaintiff in the Court below claims, was a minor when the Statute of Limitations was suspended by the Act of December, 1, 1861, and January 13, 1862, and that at the passage of the Act of February 26, 1863, no limitation had commenced to run. The Statute was suspended at the date of her marriage, on the 6th day of December, 1866. She died a married woman, on the 11th of October, 1873. (R. p. 17.) And this suit was instituted on the 18th of May, 1874. (R. p. 1.)

II.

It is the contention of the plaintiffs in error that the several statutes enacted by the Legislature of Texas suspending the Statute of Limitations, and cited in the statement under the preceding proposition were repealed by Ordinance No. 11, adopted by the Convention of 1866, called for the purpose of amending the Constitution. To this we reply by the

Proposition:

That Ordinance No. 11 was *ultra vires*, and did not have the effect to repeal the laws suspending the Statute of Limitations.

Statement:

The Constitutional Convention of 1866 was called under the order of A. J. Hamilton, Provisional Governor of Texas. In his proclamation, dated July 25, A.D. 1865, he says:— "A Convention of the people of Texas will be held at as early a period as possible. The Convention thus to be assembled will be vested with full power to alter or amend the present Constitution of the State, or frame a new one, and submit their action in either case to the qualified voters of the State for their acceptance or rejection."

On the 8th of January, 1866, Governor Hamilton issued his proclamation calling the Convention, and defined its powers and duties as expressed in his proclamation dated July 25, 1865. The Convention assembled on the 10th of February, 1866. It adopted numerous amendments of the Constitution of 1861, which were incorporated therein, and are indicated by being printed in italics. (See Constitutions of Texas, 2d Ed., 1884, pp. 290, 332.)

The Convention also passed several Ordinances, including the following:

Ordinance No. 3, providing for the election of State offi-

cers, and fixing the time for the meeting of the Legislature. (Constitutions of Texas, 2d Ed., p. 334.)

Ordinance No. 4, providing for the ratification of the amendments to the Constitution, and directing how the election for that purpose should be held. (Constitutions of Texa, 2d Ed., 1884, p. 335.)

Ordinance No. 9, which reads as follows:

No. 9.—AN ORDINANCE

Defining the Constitution of the State of Texas.

SECTION I. *Be it ordained by the People of Texas in Convention assembled*, That the Constitution of the State of Texas shall be as follows: The Constitution of the State of Texas, as in force on the 28th of January, A.D. 1861.

The following Ordinances adopted by this Convention:

The Ordinance entitled "Freedmen," adopted as a substitute for Article 8th in the Constitution in force January 28th, 1861.

The Ordinance declaring the war debt void and for other purposes. (Ordinance No. 2.)

The Ordinance assuming the United States Direct Tax. (Ordinance No. 6.)

The Ordinance on the subject of Secession. (Ordinance No. 1.)

SEC. 2. All other amendments that may be made by this Convention shall be submitted to the people at the first general election, or on the fourth Monday in June, 1866, for their acceptance or rejection; and if accepted by them, shall become a part of said Constitution, and not otherwise. The amendments submitted to the people shall present the whole Constitution as proposed to be amended.

Passed March 27, 1866.

Ordinance No. 11, is entitled An Ordinance making

valid the laws and acts of officers therein mentioned, and for other purposes.

The sixth section of the Ordinance read as follows:

SEC. 6. Be it further ordained, That in all civil actions the time between the 2d day of March, 1861, and the 2d day of September, 1866, shall not be computed in the application of any Statute of Limitations. (Constitutions of Texas, 2d Ed., 1884, pp. 342, 3).

This Ordinance is not mentioned in Ordinance No. 9, and none of its provisions are included in any of the amendments of the Constitution submitted to the vote of the people. (Constitutions of Texas, 2d Ed., 1884, p. 299).

The proclamation of Gov. Throckmorton shows that the amendments of the Constitution only were submitted to the vote of the people, and that none of the Ordinances, other than those mentioned in Ordinance No. 9, were so submitted, (Constitutions of Texas, p. 332).

Authorities:

Mr. Jameson, in his work on the Constitutional Convention, (sec. 423, p. 391,) after an examination of all the decisions touching its powers, sums up his conclusions as follows:

"The result is that a Convention cannot assume legislative power. The safety of the people, which is the supreme law, forbids it. Even if we suppose the body expressly empowered by the Legislature to exercise such powers, the right so to do must be denied, because the same supreme law places an absolute interdict upon such grant; it is beyond the power of a Legislature to delegate any such authority."

Mr. Cooley, in his work on Constitutional Limitations, fifth edition, (p. 41, 33d *Note*,) referring to Jameson on Constitutional Conventions, says:

"This work is so complete and satisfactory in its treat-

ment of the general subject as to leave but little to be said by one who shall afterwards attempt to cover the same

SEC. 6 of Ordinance No. 11 does not in terms repeal the statutes of 1861-'2-'3 above cited, nor are its provisions inconsistent with those statutes so as to repeal them by implication.

The Acts of December 7, 1861, January 13, 1862, and February 26, 1863 suspending limitation, were limited to certain civil actions, and did not apply to actions for damages, etc.

SEC. 6 of Ordinance No. 11 may be regarded as a declaration that limitation was suspended by the war in *all* cases from the 2d of March, 1861, until the close of the war, as announced by this Court in Brown v. Hiatt, 15 Wallace, 177, thus bringing additional cases within the operation of the statutes suspending limitation.

ders a Constitutional Convention was convened and a constitution adopted by the people in July, 1869, which was approved by Congress by the act entitled An Act to admit the State of Texas to representation in the Congress of the United States, approved March 30, 1870, (Constitutions of Texas, p. 365, 376).

While the war was not flagrant in Texas after the issuance of the President's Proclamation on the 20th of August, 1866, yet the reconstruction acts of Congress were passed and the orders of the commander of the Fifth Military district were issued, in the exercise of the war power.

Article 12, section 43, of the constitution of 1869, which was approved by the act of Congress of March 30, 1870, read as follows:

"Art. 12, Sec. 43.—The Statutes of Limitation of civil suits were suspended by the so-called Act of Secession of

the 28th of Janury, 1861, and shall be considered as suspended within this State, until the acceptance of this Constitution by the United States Congress."

If it be conceded that this clause of the constitution can have no retroactive effect, so as to revive causes of action previously barred, it may be accepted as a declaration of the fact that war between Texas and the Union was not closed until the acceptance of this Constitution, which would put an end to the exercise of war powers by Congress or by the Executive Department, and that Statutes of Limitations suspended by the acts of the Legislature of Texas as above stated, were not set in motion until March 30, 1870.

III.

The defendant in error ask for an affirmance of the judgment of the Supreme Court upon the following:

Proposition:

The judgment of the Supreme Court of Texas was based on award of arbitrators selected by the parties to the suit, and is conclusive upon these parties:

Statement:

This case pending in the Supreme Court of Texas on appeal, was by consent of the parties in writing, as required by the statute referred to the Commissioners of Appeals. (R. p. 31.) The commissioners awarded that there was no error in the judgment of the District Court of Washington county, and that the same shall be affirmed. (R., p. 31, 32).

The judgment of the Supreme Court is as follows:

This case having been referred to the Commissioners of Appeals for their decision, and said Commissioners having

awarded that there was no error in the judgment, and that the same should be affirmed, it is therefore considered adjudged and ordered that the judgment of the court below be in all things affirmed, that the appellants in due course of administration pay all costs in this behalf expended, and this decision be certified below for observance, (R., p. 32).

By an act of the Legislature of Texas entitled an act to create a Commission of Arbitration and Award, etc., approved July 9, 1879, (Laws of Sixteenth Legislature, extra session, chap. 34; appendix to Revised Statutes of Texas, p. 45), a Commission of Arbitration and Award was created.

Section 2 reads as follows:

"Said commissioners shall have the power to hear and pronounce award upon all civil cases now or hereafter pending in the Supreme Court or the Court of Appeals. wherein the parties or their attorneys may file consent in writing to the reference thereof to said commission."

Section 7 reads as follows: "Said Commissioners shall report its conclusions or award to the Supreme Court or Court of Appeals as the case may be, in the cases so referred, and may accompany the same with a brief synopsis of the case and their opinion thereon, and the conclusions or award aforesaid shall be and become the judgment of the Supreme Court or the Court of Appeals aforesaid. Said courts shall make and render such further orders, judgments or decrees as may be necessary or proper to make said award effective."

The remaining sections of the Act relate to matters of detail not affecting the power of the Commission.

It will be seen that the Supreme Court of Texas had no right to review, correct or set aside an award of the Commission of Arbitration; but the same became the judgment of the Supreme Court, whose only duty was to make and render such further order, judgment or decree as may be

necessary or proper to make said award effective. The only remedy of the party aggrieved by the decision was to apply to the Commission of Arbitration to correct any error of fact or law into which it may have fallen.

The parties having selected their tribunal for the decision of their case are bound by its action.

Authorities:

Burchell v. Marsh, 17 How., 344–352.
Kleine v. Catara, 2 Gall., 69.
Officiers v. Dirks, 2 Texas, 468.
Forshey v. R. R. Co., 16 Texas, 515.
Taylor v. Harris, 16 Texas, 574.

Respectfully submitted,

By F. CHARLES HUME,
SAYLES & BASSETT,
And SETH SHEPPARD.